**D-7**

## CITIZENS CLEAN ELECTIONS COMMISSION (F-16-0104)

Title 2, Chapter 20, Article 1, General Provisions; Article 2, Compliance and Enforcement Procedures; Article 3, Standard of Conduct for Commissioners and Employees; Article 4, Audits; Article 5, Rulemaking; Article 6, Ex Parte Communications; Article 7, Use of Funds and Repayment

**GOVERNOR'S REGULATORY REVIEW COUNCIL**
**ANALYSIS OF FIVE-YEAR REVIEW REPORT**

**MEETING DATE: January 5, 2016** **AGENDA ITEM: D-7**

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**TO:** Members of the Governor's Regulatory Review Council ("Council")

**FROM:** Chris Kleminich, Staff Attorney

**DATE:** December 18, 2015

**SUBJECT:** **CITIZENS CLEAN ELECTIONS COMMISSION (F-16-0104)**
Title 2, Chapter 20, Article 1, General Provisions; Article 2, Compliance and Enforcement Procedures; Article 3, Standard of Conduct for Commissioners and Employees; Article 4, Audits; Article 5, Rulemaking; Article 6, Ex Parte Communications; Article 7, Use of Funds and Repayment

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## COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

### Purpose of the Agency and Number of Rules in the Report

The purpose of the Citizens Clean Elections Commission (Commission) is to enforce the state's Clean Elections Act ("Act"), including assessing penalties for violation of the Act and sponsoring debates among candidates. The Commission is comprised of five members. Commissioners are appointed alternatively by the governor and the highest ranking official of the opposite party. Commissioners must not have served in, or run for, public office for five years. No more than two members of the commission may be from any one party or county.

This five-year-review report covers 72 rules in A.A.C. Title 2, Chapter 20. The Commission's rules are made under its exemption from A.R.S. Title 41, Chapter 6, Article 3, and are not required to be submitted to the Council for approval.

### Article Contents, Including the Subject Matter of Each Rule in the Report

Article 1 contains twelve rules, related to general provisions, which address definitions; communications: time and method; certification as a participating candidate; certification for funding; distribution of funds to certified candidates; candidate debates; termination of participating candidate status; reporting requirements; campaign accounts; books and records requirements; political party exceptions; and candidate statement pamphlets.

Article 2 contains twenty-five rules, related to compliance and enforcement procedures, which address scope; initiation of compliance matters; complaints; initial complaint process, notification; opportunity for no action on complaint-generated matters; Executive Director's

recommendation on complaint-generated matters; internally generated matters, referrals; complaint processing, notification; investigation; written questions under order; subpoenas and subpoenas duces tecum, depositions; motions to quash or modify a subpoena; the probable cause to believe recommendation, briefing procedures; the probable cause to believe finding; conciliation; enforcement proceedings; ex parte communications; representation by counsel, notification; civil penalties; notice of appealable agency action; requests for administrative hearing; informal settlement conferences; administrative hearings; review of administrative decisions by Commission; and judicial review.

Article 3 contains twelve rules, related to standards of conduct for commissioners and employees, which address purpose and applicability; definitions; notification to commissioners and employees; interpretation and advisory service; reporting suspected violations; disciplinary and other remedial action; general prohibited conduct; outside employment or activities; financial interests; political and organization activity; membership in associations; and use of state property.

Article 4 contains seven rules, related to audits, which address purpose and scope; general; random audits; conduct of fieldwork; preliminary audit reports; final audit reports; and release of audit reports.

Article 5 contains six rules, related to rulemaking, which address purpose and scope; procedural requirements; processing of petitions; disposition of petitions; Commission considerations; and the administrative record.

Article 6 contains four rules, related to ex parte communications, which address purpose and scope; definitions; audits, investigations, and litigation; and sanctions.

Article 7 contains six rules, related to use of funds and repayment, which address purpose and scope; use of campaign funds; use of assets; documentation for direct campaign expenditures; repayment; and additional audits or repayment determinations.

**Year that Each Rule was Last Amended or Newly Made**

- October 30, 2015: Section 109
- August 20, 2015; Sections 206 and 208
- July 23, 2015: Sections 107, 110, 111, 113, 204, 205, 402.01, 703, and 704
- September 27, 2013: Sections 101 and 222
- May 9, 2013: Sections 104, 105, and 702
- October 6, 2011: Section 401
- July 21, 2011: Section 223
- May 20, 2011: Section 108
- October 22, 2009: Section 112
- August 31, 2009: Section 702.01
- February 28, 2008: Section 404
- January 1, 2008: Sections 207, 211, 213, 215, 303, and 304
- August 27, 2007: Sections 103 and 106

- February 15, 2006: Sections 214 and 217
- May 28, 2005: Sections 203, 402, 403, 405, 406, 701, and 705
- May 21, 2002: Sections 210 and 216
- November 27, 2001: Sections 201, 202, 209, 220, 221, 224, 225, 226, 227, 228, 301, 302, 305, 306, 307, 308, 309, 310, 311, 312, 501, 502, 503, 504, 505, 506, 601, 602, 603, and 604

**Proposed Action**

The Commission does not propose any action on the rules.

**Summary of Reasons for the Proposed Action**

The Commission indicates that the rules are effective, consistent with other rules and statutes, are enforced as written, and are clear, concise, and understandable.

**Exemption or Request and Approval for Exception from the Moratorium**

The Commission has indicates that it is exempt from Executive Order 2015-01, as it is not an agency whose head is appointed by the Governor.

**Substantive or Procedural Concerns**

The Commission submitted this report to the Council office on October 28, 2015. The Commission has taken the position that amendments to Section 109 which were passed unanimously by the Commission on October 29th and 30th, and which became effective immediately, are not within the purview of this five-year-review report. Staff disagrees with the Commission's position.[i] The five-year-review process primarily focuses on the prospective impact of the rules going forward. The process is not, in staff's view, intended to take a retrospective view of rules that have already been amended. Consequently, it has been standard practice for the Council to review rules as they are written at the time of voting on the report, not as they are written at the time of submission of the initial version of the report. In short, to ask the Council to review and vote on a report that is not based on the current rules is, to staff, an impractical and unproductive use of state resources.

**Analysis of the agency's report pursuant to criteria in A.R.S. § 41-1056 and R1-6-301:**

1. **<u>Has the agency certified that it is in compliance with A.R.S. § 41-1091?</u>**

Yes. The Commission has certified its compliance with A.R.S. § 41-1091.

[i] For context, two e-mails between Council staff and Commission staff have been included in the materials provided for this submission.

**2. Has the agency analyzed the rules' effectiveness in achieving their objectives?**

Yes. The Commission indicates that all of the rules are effective in achieving their objectives.

**3. Has the agency received any written criticisms of the rules during the last five years, including any written analysis questioning whether the rules are based on valid scientific or reliable principles or methods?**

Yes. The Commission indicates that, over the past five years, public comments and criticisms have been received on Sections 109, 206, 208, and 222. The Commission has summarized the content of these criticisms in the report.

**4. Has the agency analyzed whether the rules are authorized by statute?**

Yes. The Commission cites to A.R.S. § 16-956(C), under which it "may adopt rules to carry out the purposes of this article [Title 16, Chapter 6, Article 2, Citizens Clean Elections Act] and to govern procedures of the [C]ommission." Staff has reviewed the statutory provisions and the public comments that have been submitted regarding the extent of the Commission's rulemaking authority, and encourages members to do the same.[ii] Staff's conclusion is that the Commission has reasonably interpreted its statutes, as the Commission's interpretation of the statutes that it implements, while not infallible, should ordinarily be given great weight. *See* U.S. Parking Sys. v. City of Phoenix, 772 P.2d 33, 34 (Ariz. Ct. App. 1989).

**5. Has the agency analyzed the rules' consistency with other rules and statutes?**

Yes. The Commission indicates that the rules are consistent with other rules and statutes.

**6. Has the agency analyzed the current enforcement status of the rules?**

Yes. The Commission indicates that all of the rules are fairly and consistently enforced by the Commission.

**7. Has the agency analyzed whether the rules are clear, concise, and understandable?**

Yes. The Commission indicates that all of the rules are clear, concise, and understandable.

**8. Stringency of the Rules:**

**a. Are the rules more stringent than corresponding federal law?**

No. No federal laws directly correspond to the rules.

[ii] The text of written comments that relate to the Commission's statutory authority is included in the "CCEC Public Comments" document, as part of the materials provided for this submission..

**b. <u>If so, is there statutory authority to exceed the requirements of federal law?</u>**

Not applicable.

**9. <u>For rules adopted after July 29, 2010:</u>**

**a. <u>Do the rules require issuance of a regulatory permit, license or agency authorization?</u>**

No. The Commission indicates that its rules do not require the issuance of a regulatory permit, license, or agency authorization.

**b. <u>If so, are the general permit requirements of A.R.S. § 41-1037 met or does an exception apply?</u>**

Not applicable.

**10. <u>Has the agency indicated whether it completed the course of action identified in the previous five-year-review report?</u>**

Yes. The Commission's last five-year-review report was approved by the Council on January 11, 2011. In that report, the Commission indicated that it would amend Sections 101, 105, 108, 109, 113, 223, and 702 by July 2011. All of the rules have been amended accordingly, or in the case of Section 113, repealed. Section 113 related to the calculation of equalizing funds prior to its repeal on October 6, 2011. A new Section 113, related to candidate statement pamphlets, was established on July 23, 2015.

**11. <u>Has the agency included a proposed course of action?</u>**

Yes. The Commission does not propose any action on the rules.

## <u>Conclusion</u>

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. This analyst recommends the report be approved.

**GOVERNOR'S REGULATORY REVIEW COUNCIL**
**ANALYSIS OF FIVE-YEAR REVIEW REPORT**

**MEETING DATE: January 5, 2016** **AGENDA ITEM: D-7**

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**TO:** Members of the Governor's Regulatory Review Council ("Council")

**FROM:** GRRC Economist

**DATE:** December 18, 2015

**SUBJECT:** **CITIZENS CLEAN ELECTIONS COMMISSION (F-16-0104)**
Title 2, Chapter 20, Article 1, General Provisions; Article 2, Compliance and Enforcement Procedures; Article 3, Standard of Conduct for Commissioners and Employees; Article 4, Audits; Article 5, Rulemaking; Article 6, Ex Parte Communications; Article 7, Use of Funds and Repayment

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I reviewed the five-year-review report's economic, small business, and consumer impact comparison for compliance with A.R.S. § 41-1056 and make the following comments.

**1. <u>Economic Impact Comparison</u>**

The Commission provided economic information for review since an economic, small business, and consumer impact statement (EIS) was not available for the rules under review due to the procedural difference followed by the Commission pursuant to A.R.S. 16-956(C).

The Chapter 20 rules reviewed all have a common objective which is to implement a clean election system in Arizona that diminishes the influence of funding from special interest groups and encourages citizen participation in the political process and freedom of speech.

The Commission reports that the rules do not create an adverse economic impact for participating candidates compiling with the enacted rules.

**<u>2. Has the agency determined that the rules impose the least burden and costs to persons regulated by the rules?</u>**

Generally, the Commission has determined that the rules impose the least burden and costs to the regulated community. The Commission intends to amend provisions of R2-20-109 (*Reporting Requirements*) to add additional clarity surrounding mileage reimbursement, independent expenditures, filing requirements, and auditing authority. In addition, provisions of R2-20-109 will be amended to address legislative changes which amended the definition of political committee and to provide further clarity regarding independent expenditures.

## 3. Was an analysis submitted to the agency under A.R.S. § 41-1056(A)(7)?

No analysis was submitted to the agency by another person that compares the rules' impact on this state's business competitiveness to the impact on businesses in other states under A.R.S. § 41-1056(A)(7).

## 4. Conclusion

After review, staff concludes that the report complies with A.R.S. § 41-1056 and recommends approval.

**Doug Ducey**
Governor

**Thomas M. Collins**
Executive Director

**Thomas J. Koester**
Chair

**Mitchell C. Laird**
**Steve M. Titla**
**Damien R. Meyer**
**Mark S. Kimble**
Commissioners

**State of Arizona**
**Citizens Clean Elections Commission**

**1616 W. Adams - Suite 110 - Phoenix, Arizona 85007 - Tel (602) 364-3477 - Fax (602) 364-3487 - www.azcleanelections.gov**

**Via E-mail and U.S. Mail**

October 28, 2015

Bret H. Parke, Chair
Governor's Regulatory Review Council
100 North Fifteenth Avenue, Suite 402
Phoenix, Arizona 85007
elizabeth.conrad@azdoa.gov

**Re: Five-year Review Report and Certification of Compliance with A.R.S. § 41-1091**

Dear Chairman Parke:

The Citizens Clean Elections Commission (the "Commission") submits its five-year review report for Chapter 20 of Title 2 in compliance with A.R.S. § 41-1056. All Commission rules have been reviewed and no rule will expire under A.R.S. § 41-1056(J). All rule changes outlined in our five year report have been published with the Arizona Administrative Register.

The Commission certifies that it is in full compliance with the requirements of A.R.S. § 41-1091. The Commission certifies that it does not have any Substantive Policy Statements. Prior Substantive Policy Statements have been incorporated into the Commission's rules through exempt rulemaking.

If you require any further information, or have comments or questions, please contact Sara Larsen by e-mail at sara.larsen@azcleanelections.gov or by phone at (602) 364-3477.

Sincerely,

Thomas M. Collins
Executive Director
Citizens Clean Elections Commission

# *FIVE YEAR REVIEW – October 2015*
# *Citizens Clean Elections Commission*

This report covers all rules in Title 2, Chapter 20, all articles. The Citizens Clean Elections Commission (the "Commission") adopted these rules to further the goals of the Citizens Clean Elections Act ("Act"). The Act was passed by the voters in 1998 and created the clean elections system to diminish the influence of special-interest money, including the opportunities for and appearance of *quid pro quo* corruption, and to thereby promote the integrity of Arizona state government. The Act promotes freedom of speech under the United States and Arizona Constitutions. It also created a voluntary system wherein "participating" candidates receive public funds to finance campaigns. To qualify for funding, participating candidates must follow additional rules and reporting requirements. The Act also applies to candidates who are nonparticipating candidates and independent spenders in elections. The Rules implement the provisions of the Act. All rules created or amended prior to June 25, 2013 have been "pre-cleared" by the U.S. Department of Justice pursuant to Section Five of the Federal Voting Rights Act.

The Commission reports the following analysis of its rules in the order required by Arizona Administrative Code ("A.A.C.") R1-6-301. Pursuant to A.A.C. R1-6-301(B), Part I includes information pertaining to all, or a great number, of the rules. Part II reports information unique to the listed rules.

## Part I: Analysis Which Is Identical Within Groups of Rules

### 1. General statutes authorizing the rule

INFORMATION IS IDENTICAL FOR AND APPLIES TO ALL RULES

The Commission's general rulemaking authority is found in A.R.S. § 16-956 (C). This statute allows the Commission to adopt rules to carry out the purposes of the Article and to govern procedures of the Commission. A.R.S. § 16-956 (C) provides:

> The commission may adopt rules to carry out the purposes of this article and to govern procedures of the commission. Commission rule making is exempt from title 41, chapter 6, article 3. The commission shall propose and adopt rules in public meetings, with at least sixty days allowed for interested parties to comment after the rules are proposed. The Commission shall also file a notice of exempt rule making and the proposed rule in the format prescribed in section 41-1022 with the secretary of state's office for publication in the Arizona administrative register. After consideration of the comments received in the sixty-day comment period, the commission may adopt the rule in an open meeting. Any rules given final approval in an open meeting shall be filed in the format prescribed in section 41-1022 with the Secretary of State's Office for publication in the Arizona Administrative Register. Any rules adopted

by the Commission shall only be applied prospectively from the date the rule was adopted.

The Commission is governed by the Act codified at Title 16, Chapter 6, Article 2. The Act includes A.R.S. §§ 16-940 through -961. A copy of the Act is attached hereto as Attachment A. Attachment B is a copy of the rules covered by this report.

**2. The objective of the rule**

INFORMATION IS IDENTICAL FOR AND APPLIES TO ALL RULES

The objective of each rule is to further the objective of the Act, which as stated in A.R.S. § 16-940 (A) is:

> to create a clean elections system that will improve the integrity of Arizona state government by diminishing the influence of special-interest money, will encourage citizen participation in the political process, and will promote freedom of speech under the U.S. and Arizona Constitutions.

**3. Effectiveness of the rule in achieving the objective**

INFORMATION IS IDENTICAL FOR AND APPLIES TO ALL RULES

Each rule is effective in achieving the above-stated objective.

**4. Consistency of the rule with state and federal statutes and rules, and a listing of the statutes or rules used in determining the consistency**

INFORMATION IS IDENTICAL FOR AND APPLIES TO ALL RULES.

The rules are consistent with state statutes and in the process of preparing this report the rules have been compared against each other and A.R.S. §§ 16-940 through -961 and have been found to be consistent.

**5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement**

INFORMATION IS IDENTICAL FOR AND APPLIES TO ALL RULES.

All rules are fairly and consistently enforced by the Commission.

**6. Clarity, conciseness, and understandability of the rule**

INFORMATION IS IDENTICAL FOR AND APPLIES TO ALL RULES.

The Commission finds all of its rules to be clear, concise, and understandable.

## 7. Summary of the written criticisms of the rule received by the agency within five years

This information is provided in Part II for individual rules that were the subject of written criticism in the last five years. For rules with no entry under item 7 in Part II, the Commission did not receive any written criticism of the rule.

## 8. Estimated economic, small business, and consumer impact

INFORMATION IS IDENTICAL FOR AND APPLIES TO ALL RULES

Economic, small business and consumer impact statement

The rules proposed and adopted by the Commission between January 2010 and July 23, 2015 create no economic impact for small businesses or consumers provided participating candidates abide by the rules. Failure to abide by any of the statutes or rules may create an economic impact on those subject to the penalties the Commission may impose.

The Commission receives funds from the following sources.

- A 10 percent surcharge imposed on all civil and criminal fines and penalties collected pursuant to A.R.S. § 12-116.01;
- A $5 voluntary contribution per taxpayer ($10 when married and filing jointly) who files an Arizona state income tax return and marks an optional check-off box on the first page of the form. A taxpayer who checks this box receives a $5 reduction in tax liability and $5 goes to the Clean Elections Fund (NOTE: As of August 2, 2012, the Commission only receives $5 voluntary taxpayer contributions from individuals filing tax returns for tax years 2012 and earlier.);
- A voluntary donation to the Clean Elections Fund by designating the Fund on an income tax return form filed by the individual or business entity, or by making a payment directly to the Fund. Any taxpayer making a donation shall receive a dollar-for-dollar tax credit not to exceed 20 percent of the tax amount on the return or $680 per taxpayer, whichever is higher (NOTE: As of August 2, 2012, the Commission no longer accepts donations for the dollar-for-dollar tax credit.);
- Qualifying contributions received by participating candidates;
- Civil penalties assessed against violators of the Citizens Clean Elections Act.

## 9. Analysis submitted by another person on the rules' impact on competitiveness

INFORMATION IS IDENTICAL FOR AND APPLIES TO ALL RULES

No such analysis has been submitted to the Commission for any of its rules.

**10. Course of Action from Last Review**

INFORMATION IS IDENTICAL FOR AND APPLIES TO ALL RULES

All corrective action from the previous report was completed at the Commission meeting on July 21, 2011 and reported on the April 18, 2011 Five Year Report Progress Report.

**11. Least Burden and Costs**

INFORMATION IS IDENTICAL FOR AND APPLIES TO ALL RULES

Each rule achieves its underlying regulatory objective with the least burden and cost possible, and the probable benefits of each rule outweigh its probable costs.

**12. Determination to corresponding federal law**

INFORMATION IS IDENTICAL FOR AND APPLIES TO ALL RULES

The rules are consistent with federal law and state statutes and in the process of preparing this report the rules have been compared against each other and A.R.S. §§ 16-940 through -961 and have been found to be consistent.

**13. A.R.S. § 41-1037**

INFORMATION IS IDENTICAL FOR AND APPLIES TO ALL RULES

Commission rules do not require the issuance of a regulatory permit, license or agency authorization.

**14. Course of action the agency proposes to take regarding each rule**

This information is provided in Part II for individual rules for which the Commission proposes to take action. For rules with no entry under item 10 in Part II, the Commission proposes no course of action.

# Part II: Analysis of Individual Rules

## ARTICLE 1 – GENERAL PROVISIONS

### R2-20-101 Definitions

**2. Objective**

Supplement the definitions provided in A.R.S. §§16-901 and 16-961 for Chapter 20 of the Commission rules.

**14. Course of Action**

a. Action Taken

On October 6, 2011, the Commission struck the definition of “election cycle” from the rule because the definition is found in statute. (19 A.A.R. 3515)

On September 27, 2013, the Commission adopted final amendments to the rule that added the definitions of “person,” “candidate for statewide office,” and “legislative candidate.” The Commission also adopted final amendments to the rule that clarified the definition of “candidate” as a person and, if not specifically stated, “candidate” includes a candidate for statewide or legislative office. The Commission also adopted final amendments to the rule that changed the definition of “expressly advocates” by removing the language from (10)(b)(ii) that states “in the 16 week period immediate preceding a general election.” (19 A.A.R. 3515)

b. Action Proposed

None.

**R2-20-102 Applicability**

**2. Objective**

Specify to which candidates the Act and rules apply.

**14. Course of Action**

a. Action Taken

On September 27, 2013, the Commission unanimously repealed the applicability rule to eliminate potential confusion. (19 A.A.R. 3518)

b. Action Proposed

None.

**R2-20-103 Time Calculations**

**2. Objective**

Clarify procedures for computing periods of time and methods of communicating between the candidate and the Commission.

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

### 2. Objective

Provide guidance on filing an application for certification and electronic campaign finance reports; accepting contributions and making expenditures; and requirements for a nonparticipating candidate to be eligible for participating candidate status.

### 14. Course of Action

a. Action Taken

On October 6, 2011, the Commission adopted final rule amendments to (C)(8) clarifying the rule by removing the language "equalizing fund payments" as the Commission no longer issued equalizing funding at that time and inserted the language "primary and general election funding" to clarify the funding type. (19 A.A.R. 1685)

On May 9, 2013, the Commission adopted final rule amendments to (D)(5) requiring participating candidates to attend a candidate training class within 60 days of being certified or within 60 days of the beginning of the qualifying period if the candidate is certified prior to the start of the qualifying period. (19 A.A.R. 1685)

b. Action Proposed

None.

## R2-20-105 Certification for Funding

### 2. Objective

Provide the process for certifying clean elections candidates.

### 14. Course of Action

a. Action Taken

On January 19, 2012, the Commission adopted final amendments to the rule adding a new subsection (C) to allow participating candidates to collect up to 50% of the number $5 qualifying contributions required to qualify for funding through a secured electronic portal maintained by the Secretary of State's Office known as E-Qual. (19 A.A.R. 1688)

On February 9, 2012, the Commission adopted final amendments to subsection (D) of the rule to clarify that solicitor information is not required for $5 qualifying contributions collected in accordance with subsection (C). (19 A.A.R. 1688)

On May 9, 2013, the Commission adopted final amendments to subsection (J) of the rule increasing the minimum number of $5 qualifying contributions required for all statewide and legislative offices. (19 A.A.R. 1688)

b. Action Proposed

None.

**R2-20-106 Distribution of Funds to Certified Candidates**

**2. Objective**

Provide the process and criteria for the Commission to evaluate a candidate's application for funding.

**R2-20-107 Candidate Debates**

**2. Objective**

Provide procedures for conducting debates, for candidates seeking to be excused from participation in the debates and the penalty for failing to participate in the debates.

**14. Course of Action**

a. Action Taken

On October 6, 2011, the Commission adopted final amendments to subsection (E) of the rule by removing reference to equalizing funds as the Commission no longer issued equalizing funds at that time. (19 A.A.R. 1690)

On November 21, 2013, the Commission adopted final amendments to subsections (A), (D), and (K) to outline the timelines and procedures for the Commission to invite participating and non-participating candidates to Commission sponsored debates and for allowing non-participating candidates to request a Commission sponsored debate even if there is not a participating candidate in the race. (19 A.A.R. 4213)

On July 23, 2015, the Commission adopted final amendments subsection (D)(3) to clarify the procedures in which a nonparticipating candidate may participate in a Commission sponsored debate and/or request the Commission sponsor a debate. (21 A.A.R. 1627)

b. Action Proposed

None.

## R2-20-108 Termination of Participating Candidate Status

### 2. Objective

Provide a method for candidates to withdraw their application for certification or funding.

### 14. Course of Action

a. Action Taken

On May 20, 2011, the Commission adopted final amendments to the rule to permit a participating candidate to terminate the candidate's participation in the Arizona's public financing program. The Commission also removed language from subsection (A) stating that "the candidate shall immediately begin the process of returning public funds to the Fund" in order to clarify that once a candidate has received public funds, the candidate may not withdraw from participation in the program. The Commission amended subsection (C) to include language permitting a person who has withdrawn from participation to reapply provided the candidate is in compliance with other rules relating to the certification of participating candidates. (17 A.A.R. 1950)

b. Action Proposed

None.

## R2-20-109 Reporting Requirements

### 2. Objective

Provide the requirements for candidates and independent expenditures committees to file campaign finance reports.

### 7. Written Criticism

Prior to the September 27, 2013 Commission meeting, Sam Wercinski of Arizona Advocacy Network submitted written public comment in support of the Commission proposed rule changes. Mr. Wercinski proposed a change to subsection (B)(3)(d) to clarify that the joint expenditure should fairly allocated to the "obligated candidate" rather than "candidate."

Prior to the May 22, 2014 Commission meeting, the Commission received public comment regarding the rule. Senator Steve Pierce and the Elect Steve Pierce Committees, through their legal counsel, Michael Liburdi, submitted a petition for a rule change proposing the Commission repeal R2-20-109(G). Mr. Liburdi stated the rule "is an extra-legal exercise of the Commission's rulemaking power and established bad public policy for regulators and non-participating candidates." The Citizens Clean Elections staff recommended the Commission not repeal the provision. Robyn Prud'homme-Bauer from the League of Women Voters of Arizona provided written public comment supporting the Commission staff's position to R2-20-109 stating the rule changes aligned with the League's positon on full disclosure. Sam Wercinski of the Arizona Advocacy Network also submitted written public comment in support of the staff recommendation of amendments to R2-20-109(G) and in opposition to the petition for a rule change submitted by Senator Pierce. Finally, Tim Hogan from the Arizona Center for Law in the Public Interest submitted written public comment in opposition to Senator Pierce's petition for a rule change for the fact that "the plain language of the Clean Elections Act does not support Pierce's interpretation."

On July 23, 2015, the Commission considered discussion and possible action on proposed amendments to the rule that were presented at the Commission's May 14, 2015 public meeting. Prior to the meeting the Commission received numerous written public comments with 152 individuals supporting the Commission proposed rule changes and 6 individuals opposing the Commission proposed rule changes, including Connie Wilhelm Garcia, President and Executive Director of the Home Builders Association of Central Arizona. Louis Hoffman, a former Commissioner, provided substantial written public comment in regard to the rule revisions. Mr. Hoffman proposed removing the A.R.S. § 16-913 citation from subsection (F)(6) and adding clarifying language regarding independent expenditures to subsection (F)(3). Mr. Hoffman's proposal also clarifies that the Commission may audit exempt entities in subsection (F)(8). He also adds additional detailed language regarding civil penalties in a new subsection (F)(12).

On August 19, 2015, the Secretary of State submitted a petition for a rule change proposing the Commission removes from R2-20-109(F)(3) entities subject to A.R.S. § 16-913 reporting requirements from being subject to penalties under A.R.S. § 16-942.

Prior to the August 20, 2015 Commission meeting, the Commission received public comment from 33 individuals. Substantive written public comments were received from the Center for Competitive Politics and their counsel, Kory Langhofer, Eric Spencer, Louis Hoffman, the Arizona Chamber of Commerce and Industry, and Saman Golestan. The Commission considered all public comment and proposed revisions to the rules.

## 14. Course of Action

a. Action Taken

On October 6, 2011, the Commission adopted final amendments to subsection (A) of the rule clarifying campaign finance reports will be filed electronically with the Secretary of State's office and that participating candidates must have sufficient funds in their campaign accounts to pay for the total amount of the expenditure at the time it is made. The Commission also eliminated subsections (B-D) which pertained to equalizing funding and independent expenditures (subsections (E-F) were re-codified). Subsection (E) was added to clarify reporting requirements for participating candidates. (19 A.A.R. 2923)

On August 29, 2013, the Commission adopted final amendments to subsection (A) of the rule clarifying that participating candidate must make reimbursements to authorized agents within seven calendar days of the expenditure is deemed an in-kind contribution. In addition, the Commission added language to subsection (C) requiring candidates to maintain a travel log and reimburse mileage or air travel within seven calendar days. (19 A.A.R. 2923)

On September 27, 2013, the Commission adopted final amendments to the rule. The final adopted rule includes the following amendments:

Subsection (A) – amended to make clear the section applies to all persons obligated to file any campaign finance report subject to the Act and Rules.

Eliminates R2-20-109(A)(3)

Re-codified R2-20-109(A)(1-6) as R2-20-109(B)(1-5)

Subsection (B) - amended to further define joint expenditures and the allocation and reimbursement for joint expenditures.

Re-codified subsection(B) as subsection (C).

Subsection (C) - amended to clarify the timing of reporting expenditures for participating candidates.

Re-codified R2-20-109(C) as R2-20-109(D).

Subsection (D) - amended to clarify the transportation requirements for participating candidates.

Re-codified R2-20-109(D) as R2-20-109(E).

Subsection (E) – amended to clarify participating candidates' reports and refunds of excess monies.

Subsection (F) – added to clarify reporting requirements for independent expenditures.

Subsection (G) – added to clarify reporting requirements and campaign finance limits applicable to non-participating candidates. (19 A.A.R. 3519)

On May 22, 2014, the Commission adopted final amendments to subsection (G) of the rule to clarify the Commission's enforcement of contribution limits and reporting requirements related to non-participating candidates under the Citizens Clean Elections Act, rules, and related penalties. (20 A.A.R. 1329)

On September 11, 2014, the Commission adopted final emergency amendments to the rule. Subsection (F) was amended to clarify language related to the Commission's enforcement of reporting requirements and exceptions under the Clean Elections Act, rules and related penalties. Subsection (F)(3)(c) was amended to clarify the penalties for amounts not reported during the election. Subsection (F)(3)(d) was added to clarify that the amounts in (a), (b), and (c) are subject to adjustment of A.R.S. § 16-959. Language was added to subsection (F)(4) to clarify that any corporation, limited liability company, or labor organization that is both (a) not registered as a political committee and (b) in compliance or intends to comply with A.R.S. §§ 16-920 and -914.02 may seek an exemption from the reporting requirements of the Act. Subsection (F)(5) was amended by removing subsections (a) and (b) in regards to an organization's primary purpose and certification that the organization does not intend to accept donations or contributions for the purpose of influencing elections. Subsection (F)(6) was amended to clarify that organizations that do not receive an exemption from the Commission are required to file independent expenditure reports as specified in A.R.S. § 16-958. (20 A.A.R. 2804)

On August 20 and 21, 2015, the Commission approved rule amendment proposals for publication with the Arizona Administrative Register in order to solicit public comment for the revised rule proposals which included the Secretary of State's petition for a rule change and Mr. Langhofer's rule amendment proposal. The Commission is currently seeking public comment on the following proposed rule amendments:

R2-20-109(D)(2)(a)(b) – clarifies the time period in which mileage reimbursements and expenditures must be reported. Allow for direct fuel purchases by the candidate for the candidate's automobile only and require documentation such as a travel log to be kept regarding a candidate's direct fuel purchases.

R2-20-109 (F)(3) – adds language emphasizing an independent expenditure can be made on behalf of any candidate, a participating candidate or a nonparticipating candidate. Codify in rule statutory language stating an independent expenditure against a candidate is considered an independent expenditure on behalf of the opposing candidate(s). Add language that political committees receiving contributions or making expenditures for candidate elections are subject to the penalties of the Clean Elections Act. Also updates language to clarify the definition of "political committee" in response to HB 2649 redefining the term.

R2-20-109(F)(3) – removes entities subject to A.R.S. § 16-913 reporting requirements from being subject to penalties under A.R.S. § 16-942.

R2-20-109 (F)(6) – clarifies filing requirements to reflect statutory requirements.

R2-20-109 (F)(8) – clarifies Commission's auditing authority to eliminate potentially confusing language.

R2-20-109 (F)(12) – these provisions update the Commission's rules to address the passage of HB2649, which amended the definition of political committee and to provide further clarity to the requirements applicable to those making independent expenditures. (21 A.A.R. 1977, 2043)

b. Action Proposed

If given unanimous approval by the Commission, the earliest effective date of the proposed amendments would be October 29, 2015.

**R2-20-110 Campaign Accounts**

**2. Objective**

Specify the method for maintaining campaign accounts.

**14. Course of Action**

a. Action Taken

On October 6, 2011, the Commission adopted final amendments to the rule by removing subsection (B) which permitted the Commission to consider a nonparticipating candidate's campaign finance activity in all accounts for the purposes of equalizing funds. (19 A.A.R. 1693)

On July 23, 2015, the Commission adopted final amendments to the rule to clarify that a single campaign account is the same as a candidate campaign bank account. (21 A.A.R. 1629)

b. Action Proposed

None.

**R2-20-111 Books and Records Requirements**

**2. Objective**

Specify the manner for keeping records and giving the public access to campaign records.

**14. Course of Action**

a. Action Taken

On July 23, 2015, the Commission adopted final amendments to the rule to clarify that candidates should maintain records relating to the candidate's campaign bank account. (21 A.A.R. 1631)

b. Action Proposed

None.

**R2-20-112 Political Party Exceptions**

**2. Objective**

Provide guidance on the scope of the political party exceptions to the definitions of contributions and expenditures in A.R.S. § 16-901(5), (8).

**R2-20-113. Calculation of Equalizing Funds (REPEALED)**

**2. Objective**

Provide details for calculating equalizing funds in accordance with A.R.S. § 16-952.

**14. Course of Action**

a. Action Taken

On October 6, 2011, the Commission repealed the rule calculating equalizing funds for participating candidates. (19 A.A.R. 1694)

b. Action Proposed

None.

**R2-20-113. Candidate Statement Pamphlet (NEW RULE)**

**2. Objective**

Provide procedures for candidate eligibility and submission of statements for the Commission's primary and general election candidate statement pamphlets in accordance with A.R.S. § 16-956.

**14. Course of Action**

a. Action Taken

On July 23, 2015, the Commission adopted a new rule to clarify which candidates are eligible to submit statements to the Commission's primary and general election candidate statement pamphlets. (21 A.A.R. 1633)

b. Action Proposed

None.

**ARTICLE 2 – COMPLIANCE AND ENFORCEMENT PROCEDURES**

**R2-20-201 Scope**

**2. Objective**

Specify the scope of the rules.

**R2-20-202 Initiation of Compliance Matters**

**2. Objective**

Describe methods for initiating an enforcement matter.

**R2-20-203 Complaints**

**2. Objective**

Provide the process for filing a complaint.

## R2-20-204 Initial Complaint Processing; Notification

**2. Objective**

Specify the procedures for processing complaints.

**14. Course of Action**

a. Action Taken

On July 23, 2015, the Commission adopted final amendments to subsections (A) and (B) of the rule to allow the Commission greater flexibility in the method in which respondents are provided with copies of complaints filed with the Commission. (21 A.A.R. 1634)

b. Action Proposed

None.

## R2-20-205 Opportunity for No Action on Complaint-Generated Matters

**2. Objective**

Specify the method and time period allowed for an alleged violator to respond to a complaint.

**14. Course of Action**

a. Action Taken

On July 23, 2015, the Commission adopted final amendments to subsection (C) of the rule to require a respondent's response to be sworn to and signed in the presence of a notary public and notarized which aligns with the requirements of complaints filed with the Commission. (21 A.A.R. 1636)

b. Action Proposed

None.

## R2-20-206 Administrative Counsel's Recommendation on Complaint-Generated Matters

**2. Objective**

Specify the Executive Director's and complainant's role prior to bringing a reason-to-believe violation to the Commission.

### 7. Written Criticism

Prior the May 22, 2014 Commission meeting, Robyn Prud'homme-Bauer from the League of Women Voters of Arizona provided a written comment supporting the rule amendments. Sam Wercinski from the Arizona Advocacy Network provided written public comment in opposition the proposed subsections (C) and (D) stating the proposals would create a separate process for initiating investigations for one group of candidates versus another and therefore creating unequal due process.

### 14. Course of Action

a. Action Taken

On May 22, 2014, the Commission adopted final amendments to subsection (B) clarifying that the Executive Director's recommendation is not an appealable agency action. The Commission also adopted subsections (C) and (D) to specify the procedures for initiating an inquiry regarding a nonparticipating candidate or a nonparticipating candidate's campaign committee and that the Commission's decision to authorize an inquiry is not an appealable agency action. (20 A.A.R. 1332)

On July 23, 2015, the Commission adopted final amendments to subsection (A) of the rule allow the Executive Director to close a complaint generated matter based on the respondent complying with the rule or statute on which the complaint is founded and notifying the Commission in such an instance. (21 A.A.R. 1638)

On August 20, 2015, the Commission approved a rule amendment proposal for publication with the Arizona Administrative Register in order to solicit public comment for a proposal that would require the Executive Director to first receive Commission approval to initiate an inquiry if a person making an independent expenditure in an election without a participating candidate faces penalties subject to A.R.S. § 16-942(B). (21 A.A.R. 1981)

b. Action Proposed

If given unanimous approval by the Commission, the earliest effective date of the proposed amendment would be October 29, 2015.

## R2-20-207 Internally Generated Matters; Referrals

### 2. Objective

Provide the Executive Director with authority to generate an internal complaint.

**R2-20-208 Complaint Processing; Notification**

**2. Objective**

Provide the process for notifying the complainant and the respondent of a reason-to-believe determination.

**7. Written Criticism**

Prior to the August 20, 2015 Commission meeting, the Arizona Chamber of Commerce submitted a proposal to the Commission to amend the enforcement processing procedures when a complaint alleges an "Article 1" violation involving an independent expenditure.

**14. Course of Action**

a. Action Taken

On August 20, 2015, the Commission approved three rule amendment proposals for publication with the Arizona Administrative Register in order to solicit public comment for the proposals. (21 A.A.R. 1772, 1822, 1983)

b. Action Proposed

If given unanimous approval by the Commission, the earliest effective date of the proposed amendments would be October 29, 2015.

**R2-20-209 Investigation**

**2. Objective**

Specify the methods used by the Commission to investigate following a reason-to-believe determination.

**R2-20-210 Written Questions Under Order**

**2. Objective**

Allow the Commission to issue an order requiring any person to submit sworn, written answers to written questions.

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

**2. Objective**

Allow the Commission to authorize the Administrative Counsel or Assistant Attorney General to issue subpoenas for a deposition or issue a subpoena *duces tecum* during its investigation.

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

**2. Objective**

Allow any person to whom a subpoena is directed to apply to the Commission to quash or modify the subpoena.

**R2-20-214 The Probable Cause to Believe Recommendation: Briefing Procedures**

**2. Objective**

Specify the procedure for the Commission's determination of probable cause to believe that a violation of the statute or rule has occurred or is about to occur.

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

**2. Objective**

Provide the process for notifying the respondent of a probable cause finding.

**R2-20-216 Conciliation**

**2. Objective**

Provide the process for settling matters informally.

**R2-20-217 Enforcement Proceedings**

**2. Objective**

Provide the process for assessing civil penalties.

**R2-20-218 Reserved**

**R2-20-219 Reserved**

**R2-20-220 Ex Parte Communications**

**2. Objective**

Prohibit ex parte communications with the Commission staff or Commissioner.

**R2-20-221 Representation by Counsel; Notification**

**2. Objective**

Specify the extent of a respondent's right to be represented.

**R2-20-222 Civil Penalties**

**2. Objective**

Designate potential civil penalties.

**7. Written Criticism**

Prior to the September 27, 2013 meeting, Sam Wercinski from the Arizona Advocacy Network provided written public comment stating that he currently penalty structure is unfair and lacks deterrent value. Mr. Wercinski proposed a percentage based penalty for deterring campaign finance violations.

**14. Course of Action**

a. Action Taken

On May 9, 2013, the Commission adopted final amendments to subsections (A) and (B) which increased the maximum civil penalties for participating legislative candidate from $500 to $1,000, participating statewide candidates from $2,500 to $5,000, and for a person other than a participating candidate from $500 to $1,000. (19 A.A.R. 1697)

On September 27, 2013, the Commission adopted final amendments to the rule which struck subsection (C) of the rule which limited penalties for violations of the Act. (19 A.A.R. 3524)

b. Action Proposed

None.

**R2-20-223 Notice of Appealable Agency Action**

**2. Objective**

Specify the Commission's notice requirement after making a probable cause finding.

**14. Course of Action**

a. Action Taken

On July 21, 2011, the Commission amended subsection (A) to include language specifying the statute or the rule "violated and the specific facts constituting the violation." (On October 27, 2015, this rule amendment was submitted to Arizona Administrative Register for publication.)

b. Action Proposed

None.

**R2-20-224 Request for Administrative Hearing**

**2. Objective**

Designate the timeline and process for a respondent to request a hearing.

**R2-20-225 Informal Settlement Conference**

**2. Objective**

Provide the process for a respondent to request an informal settlement conference.

**R2-20-226 Administrative Hearing**

**2. Objective**

Specify the timeline and process for conducting administrative hearings.

**R2-20-227 Review of Administrative Decision by Commission**

**2. Objective**

Specify the Commission's responsibilities when it receives notice of an administrative decision.

**R2-20-228 Judicial Review**

**2. Objective**

Provide the process for exhausting administrative remedies prior to seeking judicial review.

**ARTICLE 3 - STANDARD OF CONDUCT FOR COMMISSIONERS AND EMPLOYEES**

**R2-20-301 Purpose and Applicability**

**2. Objective**

Indicate the purpose and scope of this article.

**R2-20-302 Definitions**

**2. Objective**

Define terms for this article.

**R2-20-303 Notification to Commissioners and Employees**

**2. Objective**

Specify material to be made available to each employee and Commissioner upon revision or entrance of new employment.

**R2-20-304 Interpretation and Advisory Service**

**2. Objective**

Specify the process for seeking advice on questions of conflict of interest.

**R2-20-305 Reporting Suspected Violations**

**2. Objective**

Provide the procedure for reporting suspected violations of conflict of interest requirements.

**R2-20-306 Disciplinary and Other Remedial Action**

**2. Objective**

Specify the disciplinary action for violating this Article.

**R2-20-307 General Prohibited Conduct**

**2. Objective**

Specify conduct that is prohibited for Commissioners or employees.

**R2-20-308 Outside Employment or Activities**

**2. Objective**

Specify the prohibited conduct related to employment and other activities for Commissioners or employees.

**R2-20-309 Financial Interests**

**2. Objective**

Specify financial conflicts of interest requirements.

**R2-20-310 Political and Organizational Activity**

**2. Objective**

Specify conflicts of interest related to express advocacy.

**R2-20-311 Membership in Associations**

**2. Objective**

Specify potential conflicts of interest related to membership in nongovernmental associations or organizations.

**R2-20-312 Use of State Property**

**2. Objective**

Specify limitations on using state property.

## ARTICLE 4 – AUDITS

**R2-20-401 Purpose and Scope**

**2. Objective**

Provide the purpose and scope of the article.

**13. Course of Action**

a. Action Taken

On October 6, 2011, the Commission adopted final amendments removing nonparticipating candidates' campaign finances from the purpose and scope of the audits conducted by the Commission. (19 A.A.R. 1699)

b. Action Proposed

None.

**R2-20-402. General**

**2. Objective**

Establish the tools available to the Commission in conducting audits.

**R2-20-402.01 Random Audits**

**2. Objective**

Authorize Commission staff to conduct random audits.

**14. Course of Action**

a. Action Taken

On October 6, 2011, the Commission adopted final amendments to the rule removing nonparticipating candidates' campaign finances from the random audits conducted by the Commission. (19 A.A.R. 1700)

On July 23, 2015, the Commission adopted final amendments to the rule to clarify that statewide and legislative candidates are selected for random audits rather than statewide offices and legislative districts, consistent with current practices. (21 A.A.R. 1640)

b. Action Proposed

None.

**R2-20-403 Conduct of Fieldwork**

**2. Objective**

Establish candidate responsibilities during an audit.

**R2-20-404 Preliminary Audit Report**

**2. Objective**

Provide the procedures for the first phase of the audit process.

**R2-20-405 Final Audit Report**

**2. Objective**

Provide the procedures for the final phase of the audit process.

**R2-20-406 Release of Audit Report**

**2. Objective**

Provide details on how an audit report is made available to the public.

## ARTICLE 5 – RULEMAKING

**R2-20-501 Purpose and Scope**

**2. Objective**

Specify the purpose and scope of the Commission's rulemaking.

**R2-20-502 Procedural Requirements**

**2. Objective**

Provide the process for filing a written petition regarding the issuance, amendment or repeal of an administrative rule.

**R2-20-503 Processing of Petitions**

**2. Objective**

Provide the process for reviewing petitions related to issuing, amending, or repealing rules.

**R2-20-504 Disposition of Petitions**

**2. Objective**

Provide the process for disposition of petitions related to rulemaking.

**R2-20-505 Commission Considerations**

**2. Objective**

Specify a nonexclusive list of criteria the Commission may consider in disposing of a petition for rulemaking.

**R2-20-506 Administrative Record**

**2. Objective**

Designate which records compose the administrative record.

## ARTICLE 6 – EX PARTE COMMUNICATIONS

**R2-20-601 Purpose and Scope**

**2. Objective**

Specify the purpose and scope of the article.

**R2-20-602 Definitions**

**2. Objective**

Define terms as used in the article.

**R2-20-603 Audits, Investigations & Litigation**

**2. Objective**

Prohibit ex parte communications with the Commission during audits, investigations or litigation.

**R2-20-604 Sanctions**

**2. Objective**

Specify the process for sanctioning those who violate this article.

## ARTICLE 7 – AUDITS AND REPAYMENT

**R2-20-701 Purpose and Scope**

**2. Objective**

Specify the purpose and scope of the article.

**R2-20-702 Use of Campaign Funds**

**2. Objective**

Specify legal uses of campaign funds.

**14. Course of Action**

a. Action Taken

On February 17, 2011, the Commission adopted final amendments to the rule to clarify the limits on candidate expenditures for staff meals (R2-20-702(C)(2)), to clarify the personal use limitations listed are not inclusive (R2-20-702(C)(3)), and to prohibit campaign funds to be used to purchase extended warranties or other similar purchase options that extend beyond the campaign (R2-20-702(C)(3)(h)). Additionally, the amendments to the rule require "fixed assets purchased with campaign funds that can be used for non-campaign purposes with a value of $200 or more that were purchased with campaign funds shall be turned in to the Commission no later than 30 days after the primary election or the general election if the candidate was successful in the primary. A candidate may elect to reimburse the Commission for 50% of the original purchase price of the item instead of turning in the item" (R2-20-702(C)(6)). (17 A.A.R. 1267)

On October 6, 2011, the Commission adopted final amendments to the rule to clarify that candidates are prohibited from using Clean Elections funding for the cost of legal defense, any affirmative claim, or any litigation in court or before the Commission regarding a campaign (R2-20-702 (C)(1)). In addition, the Commission adopted final amendments to address disclosure of payments made by participating candidates to candidates or their family members or businesses (R2-20-702(C)(4)). (19 A.A.R. 1702)

On May 9, 2013, the Commission adopted final amendments to subsection (D) of the rule to decrease the amount of time a candidate has to return a fixed asset and increase the percentage of the cost of the item that the candidate must reimburse the Commission in the event the candidate wishes to retain the fixed asset. (19 A.A.R. 1702)

b. Action Proposed

None.

**R2-20-702.01. Use of Assets**

**2. Objective**

Provide a method for a candidate to use campaign materials from prior elections.

**R2-20-703 Documentation for Direct Campaign Expenditures**

**2. Objective**

Specify the process by which a participating candidate may ensure that campaign expenditures satisfy the direct campaign expenditure requirement.

**14. Course of Action**

a. Action Taken

On July 23, 2015, the Commission adopted final amendments to the rule to clarify that candidates must keep a list of fixed assets with a value of $200 or more. The amendment keeps rules regarding fixed assets consistent. (21 A.A.R. 1641)

b. Action Proposed

None.

## R2-20-704 Repayment

**2. Objective**

Designate the process for repaying distributed funds to the Clean Elections fund and specify that the Commission may require such repayment.

**14. Course of Action**

a. Action Taken

On July 23, 2015, the Commission adopted final amendments to the rule clarifying that repayment sources include the candidate's current election campaign account. ( 21 A.A.R. 1643)

b. Action Proposed

None.

## R2-20-705 Additional Audits or Repayment Determination

**2. Objective**

Authorize additional audits or examinations of campaign activity when new facts are available.

**Christopher Kleminich**

| | |
|---|---|
| **From:** | Thomas Collins <Thomas.Collins@azcleanelections.gov> |
| **Sent:** | Thursday, December 17, 2015 1:37 PM |
| **To:** | Christopher Kleminich |
| **Cc:** | Sara Larsen |
| **Subject:** | Five Year Report Follow Up |

Chris – Thank you for your phone call the other day. I wanted to follow up with you about two issues concerning the five year review of the Clean Elections Commission's rules. As I indicated these issues are legal and should not delay the Council's review. However, I feel it is important to make you and the Council aware of these issues at the study session stage, where they can be considered as necessary. This email represents that follow up.

First, you had requested that the Commission update its report to reflect the Commission's actions after it submitted its report in October. Although you advised in your December 11 email that GRRC's review is based on the rules at the time of GRRC's vote, and not at the time of the agency's written submission, that interpretation is not supported by the statute governing the five-year review process.

Under A.R.S. 41-1056, each agency must prepare "at least once every five years" a written report concerning its rules. As you acknowledge, the Commission submitted this report in October, and that report covered all Commission-approved rules as of the date of that report. GRRC must then "approve or return, in whole or in part, the agency's report." A.R.S. 41-1056(C). GRRC "may review rules outside the five-year review process if requested by at least four council members." A.R.S. 41-1056(D).

The plain terms of 41-1056 direct GRRC's review to be of the agency's report which, by necessity, only includes an analysis of those rules in place at the time the report was written. There is no provision in 41-1056 that allows GRRC to require a supplemental report to address rules adopted after the report was submitted but before GRRC takes action on the agency's report. Based on the statutory scheme, rules adopted after the agency's report is submitted are reviewed as part of the next five-year review process. A more expedited review is permitted only if requested by at least four council members as provided in A.R.S. 41-1056(D).

For these reasons, I do not believe the Commission is required to, or GRRC staff is permitted to, expand the current review beyond the rules in place when the Commission submitted its report.

Notwithstanding this objection, I can confirm the amendments to rule R2-20-109 were passed by the Commission and became effective in October. I can provide additional information as necessary, with that caveat.

Second, I wanted to make sure that you are aware that GRRC authority over Commission rules is more limited than its authority over other agencies because the Clean Elections Act is a voter-approved initiative. As an initiative approved in 1998, the Act is subject to the Voter Protection Act (VPA), which generally prohibits the Legislature from amending, repealing or superceding voter-approved measures. Ariz. Const. art. IV, Pt. 1, § 1(6), (14). Legislation altering voter-approved initiatives is constitutional only if it furthers the purpose of the initiative and receives the support of three-fourths of the House and Senate.

These limitations in the VPA are important because in 2012, the Legislature expanded GRRC's authority under the five-year review process by permitting it to require agencies to amend or repeal agency rules. 2012 Ariz. Sess. Laws, ch. 352, § 17 (codified at A.R.S. 41-1056(E)). This expanded authority squarely contradicts the voter-approved rule-making process that governs Commission rules. ARS 16-956(E). Because of the VPA, the Commission's rule-making process cannot be amended or superceded by subsequent legislation unless the legislation satisfies the VPA's constitutional requirements. Applying the portion of the 2012 legislation that gives GRRC authority to require rule amendments and repeals would violate the VPA because it does not further the purpose of the Clean Elections Act . It undermines the Commission's independent rule-making process that the voters approved by giving authority over Commission rules to another agency. Therefore, in the Commission's five-year review, GRRC can only "approve or return, in whole or in part" the agency's report. A.R.S. 41-1056(C).

If you have any questions on these issues, please contact me.

Thanks,
Tom Collins

## Christopher Kleminich

**From:** Christopher Kleminich
**Sent:** Friday, December 11, 2015 3:07 PM
**To:** Thomas Collins
**Cc:** Sara Larsen
**Subject:** RE: Clean Elections Commission 5YRR Materials- Part 3

Hi Tom,

I appreciate the follow-up questions. To your first point, it is standard practice for the Council to review the rules as they are written at the time of voting on the report, not as they are written at the time of submission of the initial version of the report. In this instance, the Council is scheduled to vote on the Commission's report on January 5th. The five-year-review process primarily focuses on the prospective impact of the rules going forward. The process is not intended to take a retrospective view of rules that have already been amended. In short, to ask the Council to review and vote on a report that is not based on the current rules seems to be an impractical and unproductive use of state resources.

To your second point, written memoranda are currently being prepared for the Council by Gretchen, our economic analyst, and myself. At the December 29th study session meeting, I will make an oral presentation to the Council based upon these memos. We will send a copy of these memos to you on Monday the 21st, after they have been transmitted to the Council.

Please let me know if you would like to discuss any of these matters further. Have a great weekend.

Thank you,

**Chris Kleminich**
Attorney
ADOA – Governor's Regulatory Review Council | State of Arizona
100 North 15th Avenue, Suite 402, Phoenix, AZ 85007
p: 602.542.2024 | christopher.kleminich@azdoa.gov
http://grrc.az.gov

**How am I doing? Please take a moment to answer a few questions.**
https://www.surveymonkey.com/r/VOCDOGRRC

**From:** Thomas Collins [mailto:Thomas.Collins@azcleanelections.gov]
**Sent:** Friday, December 11, 2015 10:34 AM
**To:** Christopher Kleminich <Christopher.Kleminich@azdoa.gov>; Sara Larsen <Sara.Larsen@azcleanelections.gov>
**Subject:** RE: Clean Elections Commission 5YRR Materials- Part 3

Chris,

I wanted to clarify a few points before we reply. First, what is under review during the five year review. The most recent amendments to Rule 109 were not in place at the time the report was submitted. Thus, those should not be reviewed until the next five year review. Do you agree?
Second, from reviewing the website I understand that you make some form of report to the council. Does that happen at the meeting? When is that report available for our review?
If you could let us know, that would be great.
Thanks,
Tom

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MICHELE REAGAN
Secretary of State
State of Arizona

July 7, 2015

VIA EMAIL AND REGULAR MAIL

Chairman Thomas J. Koester,
Commissioner Timothy J Reckart (outgoing)
Commissioner Mitchell C. Laird,
Commissioner Steve M. Titla,
Commissioner Damien R. Meyer
Commissioner Mark S. Kimble (incoming)

Citizens Clean Elections Commission
1616 West Adams, Suite 110
Phoenix, Arizona 85007
comments@azcleanelections.gov

**Re: Opposition to Proposed Amendments to Regulation R2-20-109(F)**

Dear Commissioners Koester, Reckart, Laird, Titla, Meyer and Kimble:

The Office of the Arizona Secretary of State appreciates the excellent working relationship it has cultivated with the Citizens Clean Elections Commission over the years, and it has been our policy to work hand-in-hand with the Commission in areas of shared jurisdiction and mutual interest. Moreover, the Secretary's office has gone out of its way to further the Commission's core mission of supporting "participating candidates" who opt into the public financing system established in 1998.

But key to this working relationship was regulatory restraint on the Commission's part when it came to traditional campaign finance matters already regulated by the Secretary of State. Even in areas where the Clean Elections Act made reference to privately-funded candidates or independent expenditures by outside groups, the Commission generally refrained from bumping up against the Secretary's jurisdiction. In turn, the Secretary of State's Office respected the Commission's unique authority over participating candidates. Time has proven that good fences make good neighbors.

This is why the Commission's recent attempts to claim authority over privately-funded candidates, and potentially order certain corporations to register as political committees, is proving troublesome for me as Secretary of State. Such mission creep threatens to undermine the delicately-balanced regulatory framework that already governs Arizona elections.

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PUBLIC COMMENT

MICHELE REAGAN
*Secretary of State*
*State of Arizona*

There is only room for one regulator in matters of traditional campaign finance. In California, for example, voters in 1974 carved out campaign finance enforcement from the California Secretary of State and placed that sole authority in a Fair Political Practices Commission (FPPC). California voters clearly intended to shift the jurisdictional boundaries from one agency to another. But Arizona voters *did not* make the same choice when passing the Clean Elections Act in 1998. Rather, the Clean Elections Commission was simply intended to act as a funding mechanism for certain statewide and legislative candidates that opted into a public financing system. Nowhere in the Act, nor in the publicity pamphlet or legislative council analysis presented to voters, was the Commission promoted as Arizona's equivalent of the California FPPC. Yet that is exactly what the Commission has recently sought to transform itself into—not through the will of the voters, but through subtle regulatory decisions that ever-increasingly usurp jurisdiction from the Secretary of State and throw the political community into resulting uncertainty.

The first burgeoning crisis involves regulation of independent expenditures. Of course, the Commission has long claimed the authority to penalize groups who fail to file independent expenditure reports. This regulation somewhat made sense in a bygone era when the Commission was charged with doling out matching funds to participating candidates based on those independent expenditure reports. Without the credible threat of fines, one could argue, the Commission might be hamstrung in carrying out this core function.

But since these reports were to be filed with the Secretary of State, and therefore fell within the Secretary's jurisdiction, any conflicting or duplicative enforcement by the Commission could prove problematic. When matching funds were struck down as unconstitutional, this risk should have abated. After all, independent expenditure reports were but a means to end.

But in recent years the Commission has treated an independent expenditure report as an end unto itself, which only serves to heighten the risk of conflict. Take the recent *Legacy Foundation Action Fund* matter: even though the Secretary of State's office and an administrative law judge held this non-profit group did not violate Arizona law, the Commission has repeatedly contradicted those decisions and imposed a nearly $100,000 fine (and no doubt caused Legacy to incur several hundred thousands of dollars in attorneys' fees). Legacy has never attacked, *much less mentioned*, a participating candidate in its advertisements. Yet the Commission has relentlessly hammered this non-profit group.

Meanwhile, the effect on First Amendment political speech is potentially devastating. How can *any person* safely exercise their free speech rights in Arizona where there is risk that the Commission will second-guess the state's Chief Election Officer?

But the crisis does not end there. At least regulation of independent expenditures had *some* connection to the Act. Recent Commission regulations, on the other hand, have steadily

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encroached into other areas of the Secretary's jurisdiction that have *no* grounding in the Act whatsoever. For example, the Commission set its sights on non-profit groups and non-participating candidates in 2013, and then again in 2014. The Commission simply had no jurisdiction to enter that regulatory territory.

That brings us to the most recent proposed regulation touching various parts of R2-20-109(F), which threatens to further undermine the delicate regulatory balance in Arizona election law. First, the Commission will only deepen the independent expenditure crisis by expressly extending its jurisdiction in races with only privately-financed candidates. *See* Proposed R2-20-109(F)(3) & (6). The Commission cannot possibly have a legitimate regulatory interest where no participating candidates are involved. Second, the Commission will exacerbate an already-invalid regulation by subjecting the corporate entities to free-ranging audits. *See* Proposed R2-20-109(F)(8). The Commission cannot use the threat of civil penalties to pressure these non-profit entities to open up their books to Commission investigation. And finally, the Commission has absolutely no jurisdiction to determine when and under what conditions a group or entity becomes a "political committee" under Arizona law. *See* Proposed R2-20-109(F)(12). The Act does not grant this sweeping authority to the Commission, nor did the voters intend to do so.

Regulatory stability is necessary to ensure that political speakers remain unfettered and unafraid to exercise their First Amendment rights. The Commission's agenda of late puts that stability at risk. For the sake of our political system, even if the Commission believes it *can* legitimately regulate privately-financed candidates and non-profit groups, this does not mean the Commission *should* do so. Moreover, stepping back from the brink would forestall litigation that will inevitably follow this rule's passage.

I therefore implore the Commission to withdraw the proposed amendments to R2-20-109(F). Working cooperatively, not crosswise, is what voters expect of their elections officials. Since the Secretary of State's office has exclusive jurisdiction over political committees, privately-financed candidates, and registered non-profit groups, I respectfully ask that Commission respect my role as the state's Chief Election Officer and reject the proposed amendments.

I have enclosed additional legal analysis from my State Election Director, Eric Spencer. Please feel free to contact Mr. Spencer for any additional information concerning my office's position on these matters.

Sincerely,

Michele Reagan

Michele Reagan

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*Secretary of State*
*State of Arizona*

July 7, 2015

VIA EMAIL AND REGULAR MAIL

Chairman Thomas J. Koester,
Commissioner Timothy J Reckart (outgoing)
Commissioner Mitchell C. Laird,
Commissioner Steve M. Titla,
Commissioner Damien R. Meyer
Commissioner Mark S. Kimble (incoming)

Citizens Clean Elections Commission
1616 West Adams, Suite 110
Phoenix, Arizona 85007
comments@azcleanelections.gov

**Re: Opposition to Proposed Amendments to Regulation R2-20-109(F)**

Dear Commissioners Koester, Reckart, Laird, Titla, Meyer and Kimble:

The Office of the Arizona Secretary of State appreciates the excellent working relationship it has cultivated with the Citizens Clean Elections Commission over the years, and it has been our policy to work hand-in-hand with the Commission in areas of shared jurisdiction and mutual interest. Moreover, the Secretary's office has gone out of its way to further the Commission's core mission of supporting "participating candidates" who opt into the public financing system established in 1998.

But key to this working relationship was regulatory restraint on the Commission's part when it came to traditional campaign finance matters already regulated by the Secretary of State. Even in areas where the Clean Elections Act made reference to privately-funded candidates or independent expenditures by outside groups, the Commission generally refrained from bumping up against the Secretary's jurisdiction. In turn, the Secretary of State's Office respected the Commission's unique authority over participating candidates. Time has proven that good fences make good neighbors.

This is why the Commission's recent attempts to claim authority over privately-funded candidates, and potentially order certain corporations to register as political committees, is proving troublesome for the Secretary of State. Such mission creep threatens to undermine the delicately-balanced regulatory framework that already governs Arizona elections.

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PUBLIC COMMENT

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*Secretary of State*
*State of Arizona*

There is only room for one regulator in matters of traditional campaign finance. In California, for example, voters in 1974 carved out campaign finance enforcement from the California Secretary of State and placed that sole authority in a Fair Political Practices Commission (FPPC).[1] California voters clearly intended to shift the jurisdictional boundaries from one agency to another.[2] But Arizona voters *did not* make the same choice when passing the Clean Elections Act in 1998. Rather, the Clean Elections Commission was simply intended to act as a funding mechanism for certain statewide and legislative candidates that opted into a public financing system. Nowhere in the Act, nor in the publicity pamphlet or legislative council analysis presented to voters, was the Commission promoted as Arizona's equivalent of the California FPPC. Yet that is exactly what the Commission has recently sought to transform itself into—not through the will of the voters, but through subtle regulatory decisions that ever-increasingly usurp jurisdiction from the Secretary of State and throw the political community into resulting uncertainty.

The first burgeoning crisis involves regulation of independent expenditures. Of course, the Commission has long claimed the authority to penalize groups who fail to file independent expenditure reports. This regulation somewhat made sense in a bygone era when the Commission was charged with doling out matching funds to participating candidates based on those independent expenditure reports. Without the credible threat of fines, one could argue, the Commission might be hamstrung in carrying out this core function.

But since these reports were to be filed with the Secretary of State, and therefore fell within the Secretary's jurisdiction, any conflicting or duplicative enforcement by the Commission could prove problematic. When matching funds were struck down as unconstitutional,[3] this risk should have abated. After all, independent expenditure reports were but a means to end.

But in recent years the Commission has treated an independent expenditure report as an end unto itself, which only serves to heighten the risk of conflict. Take the recent *Legacy Foundation Action Fund* matter: even though the Secretary of State's office[4] and an administrative law judge held this non-profit group did not violate Arizona law, the Commission has repeatedly contradicted those decisions and imposed a nearly $100,000 fine (and no doubt caused Legacy to incur several hundred thousands of dollars in attorneys' fees). Legacy has

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[1] *See* California Secretary of State "History of the Political Reform Division," http://www.sos.ca.gov/campaign-lobbying/history-political-reform-division.

[2] *See* FPPC's "About the Political Reform Act," http://www.fppc.ca.gov/index.php?id=221 ("voters overwhelming passed . . . the Political Reform Act and [created] a new, independent agency to administer, interpret and enforce its provisions . . . [which] governs disclosure of political campaign contributions and spending by candidates and . . . committees.").

[3] *See Arizona Free Enterprise Club's Freedom PAC v. Bennett*, 131 S.Ct. 2806 (2011).

[4] In this case, the Maricopa County elections department acted on behalf of the Secretary of State.

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never attacked, *much less mentioned*, a participating candidate in its advertisements. Yet the Commission has relentlessly hammered this non-profit group.

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But the crisis does not end there. At least regulation of independent expenditures had *some* connection to the Act. Recent Commission regulations, on the other hand, have steadily encroached into other areas of the Secretary's jurisdiction that have *no* grounding in the Act whatsoever. For example, the Commission set its sights on non-profit groups [R2-20-109(F)(4)-(9)] and non-participating candidates [R2-20-109(G)] in 2013, and then again in 2014.[5] The Commission simply had no jurisdiction to enter that regulatory territory.

That brings us to the most recent proposed regulation touching various parts of R2-20-109(F), which threatens to further undermine the delicate regulatory balance in Arizona election law. First, the Commission will only deepen the independent expenditure crisis by expressly extending its jurisdiction in races with only privately-financed candidates. *See* Proposed R2-20-109(F)(3) & (6). The Commission cannot possibly have a legitimate regulatory interest where no participating candidates are involved. Second, the Commission will exacerbate an already-invalid regulation by subjecting the corporate entities to free-ranging audits. *See* Proposed R2-20-109(F)(8). The Commission cannot use the threat of civil penalties to pressure these non-profit entities to open up their books to Commission investigation. And finally, the Commission has absolutely no jurisdiction to determine when and under what conditions a group or entity becomes a "political committee" under Arizona law. *See* Proposed R2-20-109(F)(12). The Act does not grant this sweeping authority to the Commission, nor did the voters intend to do so.

Regulatory stability is necessary to ensure that political speakers remain unfettered and unafraid to exercise their First Amendment rights. The Commission's agenda of late puts that stability at risk. For the sake of our political system, even if the Commission believes it *can* legitimately regulate privately-financed candidates and non-profit groups, this does not mean the Commission *should* do so. Moreover, stepping back from the brink would forestall litigation that will inevitably follow this rule's passage.

The Secretary of State therefore implores the Commission to withdraw the proposed amendments to R2-20-109(F). Working cooperatively, not crosswise, is what voters expect of their elections officials. Since the Secretary of State has exclusive jurisdiction over political committees, privately-financed candidates, and registered non-profit groups,[6] she respectfully

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[5] *See* "Notices of Exempt Rulemaking" dated November 8, 2013 and October 17, 2014, respectively.

[6] A.R.S. § 16-914.02 requires certain non-profit corporations to register and report to the Secretary of State. The Commission has no jurisdiction to regulate under a statute that was passed nearly 12 years after the Clean Elections Act was enacted.

asks that Commission respect her role as the state's Chief Election Officer and reject the proposed amendments.

**The Commission Lacks Jurisdiction To Enact These Regulations**

Notwithstanding some razor-thin statutory references to non-participating candidates and independent expenditure reporting, previous Commissions wisely refrained from enforcing the Clean Elections Act in a provocative manner. This self-restraint fostered stability, not to mention comity. But that began to change in 2013, when the Commission set its sights beyond participating candidates. None of the Commission's since-enacted regulations, including the present proposal under consideration, have any basis in the Act.[7]

A. Voter Intent Cannot Justify The Commission's Recent Agenda

Nothing in Proposition 200 (1998) prophesied the Commission's present trajectory.

To be sure, the Act's "Findings and Declarations" decried the traditional method of financing campaigns. But nothing signified an intent to take over that system or claim regulatory authority over non-participating candidates. Public financing was simply intended to give candidates an alternative option. Nor did the Act express intent to go beyond ensuring that independent expenditure groups filed their requisite reports, in order to ensure matching funds could function properly. There was *no* inkling that a non-profit corporation, for example, could be subjected to regulation as a political committee based on its activities. Indeed, there would be no reason to statutorily charge the Commission with regulating such groups, given that non-profit independent expenditures were illegal at the time, and it would be nearly a dozen years before the U.S. Supreme Court lifted that ban in *Citizens United*.

The accompanying publicity pamphlet was similarly devoid of any indication the Commission could take this direction. Indeed the sole reference to enforcement stated that "Proposition 200 would establish reporting requirements *for participating candidates* . . . and would provide for various penalties, including forfeiture of office, for violations."[8] From this voters could not have possibly envisioned that the power to audit, penalize, and force donor disclosure would extend to anyone else.[9]

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[7] The proposed regulations are attached as Exhibit 1.

[8] *See* 1998 Publicity Pamphlet, pg. 85, http://apps.azsos.gov/election/1998/Info/PubPamphlet/prop200.pdf.

[9] It is also telling that not a single "Argument 'For' Proposition 200" in the publicity pamphlet envisioned this role for the Commission.

MICHELE REAGAN
*Secretary of State*
*State of Arizona*

B. The Clean Elections Act Does Not Authorize The Commission To Touch Traditional Matters Of Campaign Finance

As you know, the Clean Elections Act comprises Article 2 of Title 16 Chapter 6, whereas the campaign finance law governing traditional candidates is codified in Article 1. The Commission enforces the former, while the Secretary exclusively enforces the latter.

A.R.S. § 16-924, the Secretary of State's enforcement statute, is the starting point of any jurisdictional inquiry. The statute had traditionally provided that if the Secretary of State "has reasonable cause to believe that a person is violating any provision of this article," meaning Article 1, she must notify the attorney general for a violation regarding statewide office. *See* A.R.S. § 16-924(A) (Laws 2000, Ch. 235, § 10). In 2011 the statute was amended to clarify that the Secretary of State has jurisdiction over "any provision of this title, except for violations of chapter 6, article 2." *See id.* (Laws 2011, Ch. 332, § 23). In other words, the Secretary of State had dominion over the entirety of Arizona election law (Title 16), except the Clean Elections Act. This bill (H.B. 2304) passed 51-5 in the House and 29-0 in the Senate, easily satisfying the constitutional 3/4 vote requirement.[10] Although no Commission member apparently testified in support of the bill, it would be practically impossible to receive bipartisan support without the Commission's acquiescence. This was *de facto* acknowledgement that the Commission was confined to regulating under Article 2, which solely governs participating candidates.

The legislature recently reinforced this notion in A.R.S. § 16-905(O), which further clarifies the jurisdictional boundaries:

> For any . . . candidate who is not participating in the citizens clean elections act funding system established pursuant to article 2 of this chapter:
>
> 1. Complaints and investigations relating to an alleged violation of this article are subject only to the jurisdiction, penalties and procedures establishe this article [Article 1] and the enforcement and investigative autho secretary of state and attorney general.
>
> 2. The citizens clean elections commission has no authority to ac or otherwise act on any complaint involving an alleged violatio [Article 1].

*See* S.B. 1344 (Laws 2014, Ch. 225, § 2).

The signposts in the Clean Elections Act are equally clear. The Commission is only authorized to "[e]nforce *this* article," meaning the Clean Elections Act in Article 2. *See* A.R.S. § 16-956(A)(7) (emphasis added). It does not grant the Commission authority over "this chapter" or otherwise extend the Commission's reach to Article 1.

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[10] Section 33 of the bill authorized a pilot program for gathering $5 qualifying conti Clean Elections Act, and therefore triggered a 3/4 vote requirement to amend the vo

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Even where the Act references non-participating candidates, it makes clear that the Secretary of State retains enforcement authority. A.R.S. § 16-941(B) provides that "a non-participating candidate shall not accept [excessive] contributions . . . [and] [a]ny violation of this subsection shall be subject to the civil penalties and procedures *set forth in section 16-905, subsections J through M and section 16-924.*" (emphasis added). Importantly, A.R.S. § 16-905 outlines *the Secretary's* enforcement process.

Under subsection (J), the penalty for any violation of contribution limits "is subject to a civil penalty imposed as prescribed in section 16-924," the Secretary's exclusive enforcement statute. Alternatively, under subsection (K), "[a]ny qualified elector may file a sworn complaint with the attorney general" in order to enforce contribution limits. If neither the Secretary of State nor the Attorney General move quick enough, an individual may file a civil lawsuit pursuant to subjection (L). Nowhere in this process does the Commission play a role. Indeed, § 16-941(B)'s express incorporation of § 16-924 makes clear that the Secretary handles all enforcement matters against non-participating candidates.

Thus, statutes throughout both articles reinforce the mutually-exclusive nature of campaign finance regulation.[11]

* * *

In sum, the Commission lacks jurisdiction to regulate any campaign finance matter governed under Article 1. That includes regulation of non-participating candidates, political

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[11] The Commission has oft been told that courts have definitively settled these jurisdictional issues in the Commission's favor. Not so. *Clean Elections Institute v. Brewer* involved a pre-election challenge to a ballot measure that would have all but defunded the Commission. 209 Ariz. 241 (2004). The issue in *Brewer* was whether the proposed initiative violated the Arizona Constitution's separate amendment rule; the Commission's jurisdiction was not at issue. Nonetheless, the Commission's executive director has repeatedly singled out the following passage in Section II(B) of the opinion:

> The Act . . . require[s] that the Commission enforce measures such as (1) statutory limits on acceptance of campaign contributions, which limits apply to candidates not receiving public funding, (2) requirements concerning reporting of contributions by candidates who do not receive public funding, (3) requirements that those making independent expenditures file periodic reports, and (4) provisions allowing candidates to agree jointly to restrict campaign expenditures. . . . The Commission, therefore, would retain full enforcement authority and responsibility as to these provisions even if the voters abolished public financing of political campaigns.

*Brewer*, 209 Ariz. at 245 (A.R.S. § 16-941 citations omitted). In legal parlance, however, this is classic *dicta* that has absolutely no precedential effect. *See Creach v. Angulo*, 186 Ariz. 548, 552 (App. 1996) ("A court's statement on a question not necessarily involved in the case before it is dictum. Dictum is not binding precedent because, *inter alia*, it is without the force of adjudication and the court may not have been fully advised on the question."). Thus, it would be fundamentally erroneous for the Commission to assume this jurisdictional question has been judicially settled. Far from it. Indeed, the above statutory analysis of Articles 1 and 2 belie any such conclusion.

committees, or any other corporate non-profits subject to a reporting statute that never existed when voters passed the Clean Elections Act. This renders the Commission's entire R2-20-109(F) amendment invalid. *See Stearns v. Ariz. Dept. of Revenue*, 212 Ariz. 333, 336 (App. 2006) (agencies may exercise only those powers delegated by their enabling statute); *Canon Sch. Dist. No. 50 v. W.E.S. Constr. Co.*, 177 Ariz. 526, 530 (1994) ("An administrative agency . . . must exercise its rule-making authority within the parameters of its statutory grant; to do otherwise is to usurp its legislative authority."). Indeed, as the U.S. Supreme Court recently affirmed, "the people [are] the font of governmental power" expressed through initiative. *Ariz. State Legislature v. Ariz. Ind. Redistricting Comm'n*, 576 U.S. ____ (2015)

"[I]f the construction given by the agency is not consistent with the enabling legislation, the interpretation—whether expressed in regulation, policy, or otherwise—is invalid." *Sharpe v. Arizona Health Care Cost Containment System*, 220 Ariz. 488, 494 (App. 2009); *see also R.L. Augustine Constr. Co. v. Peoria Unified Sch. Dist. No. 11*, 188 Ariz. 368, 371 (1997) (striking agency rules that were not consistent with enabling legislation). Accordingly, the Commission almost certainly invites litigation by moving forward with these amendments.

The Commission lacks jurisdiction over non-participating candidates, political committees, and non-profit registrants under A.R.S. § 16-914.02, regardless of the merits of each proposed regulation. The Commission's effort should end here.

**Specific Deficiencies in the Proposed Rule 109(F) Amendments**

As argued above, the Commission need not assess the wisdom of proposed amendments to R2-20-109(F) because they would be void *ab initio* for lack of jurisdiction. However, to the extent the Commission intends to consider the propriety of each proposed amendment on its merits, the Secretary of State offers the following critique:

- "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)." Proposed R2-20-109(F)(3).
    - This regulation attempts to unlawfully expand the reach of the Commission's enforcement statute to cover independent expenditure groups.
    - The regulation will grant the Commission authority to regulate <u>all</u> independent expenditures in Arizona, regardless of whether a participating candidate was affected by the expenditures.
    - Moreover, the regulation should not be enacted because the Secretary of State already has jurisdiction over independent expenditures by outside groups.
- **"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." Proposed R2-20-109(F)(3).

- This regulation attempts to unlawfully expand the reach of the Commission's enforcement statute to cover independent expenditure groups.
- A.R.S. § 16-942(B) makes clear that the Commission may only penalize *candidates*:
  - "[T]he civil penalty for a violation *by on behalf of any candidate* . . . shall be one hundred dollars per day for candidates for the legislature and three hundred dollars per day for candidates for statewide office. The penalty imposed by this subsection shall be doubled if the amount not reported . . . exceeds ten percent of the adjusted primary or general election spending limit. . . . *The candidate and the candidate's campaign account shall be jointly and severally responsible* for any penalty imposed."
- The statutory language in A.R.S. § 16-942(B) has the following implications:
  - If candidates "*shall be*" responsible for any penalty under statute, then by definition outside groups *cannot* be penalized. Outside groups conduct *independent* expenditures that may not be coordinated with any candidate. It would be unlawful, not to mention fundamentally unfair, to penalize a candidate for an independent expenditure the candidate played no role in creating. This indicates the statute was not intended to penalize outside groups.
  - Since the statute contemplates fines for "candidate accounts," not "candidate committees," the statute only contemplates penalizing participating candidates. Regulation by "account" is a creature of the Clean Elections Act. *See e.g.* A.R.S. §16-948 ("Controls on participating candidates' campaign accounts"). Non-participating candidates are regulated as "committees," not "accounts," and therefore were not intended to fall within § 16-942(B)'s ambit.
  - Pegging any penalty to the "adjusted primary or general election spending limit" is further evidence that only participating candidates are subject to the statute. *See* A.R.S. § 16-961(G)-(H) (defining these spending limits). The "adjusted primary or general election spending limits" have no applicability to non-participating candidates.
- Notwithstanding that the statute only authorizes the Commission to penalize participating candidates, the Commission unlawfully enacted the present version

of R2-20-109(F)(3) in November 2013 in order to ostensibly regulate *all* outside groups. To avoid the obvious contradiction between the enabling statute and this regulation, the Commission simply ignored the "joint and several responsibility" portion of the statute and used Rule 109(F)(3) to regulate outside groups as the Commission saw fit. But Judge Thomas Shedden recently exposed this interpretive fallacy:

- "CCEC argues that the portion of the statute imposing joint and several responsibility on the candidate and committee applies only when that candidate or his committee has committed the reporting violation, and does not apply when the violation is by another entity . . . . Under CCEC's interpretation, the statute's sentence regarding . . . responsibility would have no effect and would be given no meaning when assessing penalties for violations accruing under R2-20-109(F)(3) and, in other cases, it would require adding a limitation to the statute that was not included by the voters (i.e., a limitation to the effect that . . . responsibility applies not to 'any' penalty, but only to penalties for violations made by candidates or their committees). As such, CCEC's interpretation is contrary to the principles of statutory construction [and] the Administrative Law Judge does not agree with CCEC's position that its interpretation harmonizes the statute and the rule." *See* March 4, 2015 Administrative Law Judge Decision, *In the Matter of Legacy Foundation Action Fund*, pgs. 12-13, n.6, attached as Exhibit 2.
- The judge's decision proves that *existing* R2-20-109(F)(3) is contrary to law.

- The Commission should have drawn the proper lesson from Judge Shedden's decision: no outside groups may be penalized under A.R.S. § 16-942(B) because doing so would require a candidate committee and his/her account to be jointly penalized as well. The Commission admits this would create an "absurd result." *See* Administrative Law Decision at n.6.
- Yet the Commission's new regulation will only aggravate the situation. By expressly defining an independent expenditure as being "on behalf of any opposing candidate," the Commission either seeks to:
  - Jointly penalize independent expenditure groups and the candidates that benefit from those expenditures, despite the fundamental unfairness of holding candidates responsible for an independent ad they had no part in creating; *or*

- Continue to ignore the "candidate joint and several responsibility" language in the statute, and use the new-and-improved regulation to reinforce the idea that *all* outside groups may be regulated.
- Either way, the proposed amendment to R2-20-109(F)(3) is imprudent. R2-20-109(F)(3) must be repealed, not extended.

- Moreover, the regulation should not be enacted because the Secretary of State already has jurisdiction over independent expenditures by outside groups.

- "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, and comply with the requirements of A.R.S. § 16-913." Proposed R2-20-109(F)(6).
  - The Commission has no authority in the first place to regulate corporations and unions that conduct independent expenditures pursuant to A.R.S. § 16-914.02. Nor does the Commission have authority to pressure corporations and unions to seek an exemption from these reporting obligations in return for acknowledgment of Commission jurisdiction. *See* R2-20-109(F)(4)-(5).
  - The proposed amendment extends this unlawful regulation even further: for those corporations and unions that do not surrender their legal rights by seeking an exemption from the Commission, they must now "comply with the requirements of A.R.S. §16-913."
  - Section 16-913 establishes campaign finance reporting requirements for *political committees*, not corporations and unions. Thus, the Commission is seeking to transform these "noncompliant" corporations and unions into *de facto* political committees that must disclose their donors in regularly-filed campaign finance reports.
  - Moreover, the regulation should not be enacted because the Secretary of State already has sole jurisdiction over corporations and unions, not to mention sole authority to determine when an outside group become a political committee subject to A.R.S. § 16-913 reporting requirements.

- "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 Commission may audit these entities. ~~any exempt entity pursuant to Article 4 of these rules.~~" Proposed R2-20-109(F)(8).
  - The Commission has no authority in the first place to regulate corporations and unions that conduct independent expenditures pursuant to A.R.S. § 16-914.02. Nor does the Commission have authority to pressure corporations and unions to

seek an exemption from these reporting obligations in return for acknowledgment of Commission jurisdiction. *See* R2-20-109(F)(4)-(5).

- The proposed amendment extends this unlawful regulation even further: whereas the current regulation only permits the Commission to "audit any exempt entity *pursuant to Article 4 of these rules*," the new regulation would permit wide-ranging audits without any necessity to comply with Article 4.
- This is significant because Article 4 "prescribes procedures for conducting examinations and audits of *participating candidates'* campaign finances." *See* R2-20-401. Among those procedures are various safeguards, including the right to "submit in writing [any] legal and factual materials disputing or commenting on the proposed findings contained in the preliminary audit report." *See* R2-20-404(B). Thus, corporations and unions will have no right to any audit-related procedural safeguards that participating candidates presently enjoy.
- Moreover, the regulation should not be enacted because the Secretary of State already has sole jurisdiction over corporations and unions who report under A.R.S. § 16-914.02.

- **"[A]ny entity that is formed or association that is created within the six months immediately preceding the beginning of a legislative election cycle or that is formed or created during the election cycle and knowingly makes expenditures or takes contributions of $500 or more for any election in this state in a calendar year is deemed to have been organized, conducted or combined for the primary purpose of influencing the result of any election and is a political committee. This paragraph applies to an entity or association until the completion of the first legislative election cycle identified in the preceding sentence."** Proposed R2-20-109(F)(12)(a).
  - The regulation attempts to unlawfully expand the reach of the Commission's jurisdiction to determine who constitutes a political committee. Nothing in the Clean Elections Act grants this authority. *See also* A.R.S. § 16-947(B)(2) (candidates must have already established a political committee with the Secretary of State before seeking certification as a participating candidate).
  - The regulation infringes upon First Amendment speech by singling out recently-formed corporations for disparate treatment. It is unreasonable to "deem" a corporation formed within 6 months of an election cycle as being organized primarily for political activity and therefore subject to registration as a political committee.
  - The regulation adopts an illogical and counterintuitive definition of one's "primary purpose." "Primary" is commonly held to mean "principal." *See* Black's Law Dictionary, PRINCIPAL (10th ed. 2014) ("Chief; primary; most

important"). But the Commission's proposal hinges solely on a corporation's date of establishment, as opposed to its volume of political expenditures. For example, under the Commission's proposed definition, a recently-formed corporation that spends $500 on political activity and $1,000,000 on non-political activity is treated as political committee that must file extensive reports and disclose its donors.

- The regulation's definition of "primary" purpose would gut the existing statutes that regulate political committee status. *See* A.R.S. §§ 16-901(20)(f) (effective July 3, 2015) and 16-914.02(K). Indeed, in recently amending the definition of "political committee" in A.R.S. § 16-901(20)(f), the Legislature specifically rejected the type of constrictive regulation that Executive Director Collins testified in favor of. *See* HB2649, Feb. 16, 2015 House Elections Committee, http://azleg.granicus.com/MediaPlayer.php?view_id=13&clip_id=15102. The Legislature opted to provide the *maximum* breathing space before one becomes subject to regulation as a political committee—a policy decision that the Commission cannot promptly proceed to undermine through regulation.
- The regulation is unconstitutional because it would sweep into regulation those who only incidentally engage in political speech. *See Galassini v. Town of Fountain Hills*, Summary Judgment Order, 9/30/13, 40:22-41:4 (the "primary purpose" limitation "ensures that the electorate has information about groups that make political advocacy a priority, without sweeping into its purview groups that only incidentally engage in such advocacy. . . . Arizona's definition of political committee [cannot] sweep into its purview groups that only incidentally engage in political advocacy.").
- Moreover, the regulation should not be enacted because the Secretary of State already has sole jurisdiction to determine when and under what conditions an entity becomes a political committee.

- **"[A]ny donation made by an entity that is not organized, conducted or combined for the primary purpose of influencing an election to an entity that is not organized, conducted or combined for the primary purpose of influencing the results of an election in this state shall not be considered to be a contribution or expenditure if the donor entity affirmatively restricts the use of the donation to not influencing the results of any election. If no affirmative restriction is placed on the donation and the receiving entity makes any expenditure or any donation to any subsequent entity that makes an expenditure without the affirmative restriction described in the preceding sentence, the original donation shall be considered to have been a contribution or expenditure."** Proposed R2-20-109(F)(12)(c).

- The regulation requires the disclosure of donors to a non-profit corporation even though such donors had no expectation of disclosure.
- Various individuals and businesses donate to non-profit corporations without knowing whether or how much their donations will be used for political purposes. Furthermore, there is no requirement under Arizona law for a donor to affirmatively restrict the use of his/her donation.
- Under the Commission's regulation, those donors will be involuntarily disclosed if the non-profit corporation has recently incorporated and spent a mere $500 on political activities. Such a drastic policy change should be reserved for the Legislature, not an unelected body like the Commission.
- The Commission has no jurisdiction to define what "shall be considered to have been a contribution or expenditure." This is the Legislature's sole province. *See* A.R.S. § 16-901(5) & (9) (effective July 3, 2015).
- Moreover, the regulation should not be enacted because the Secretary of State already has sole jurisdiction to determine when and under what conditions an entity becomes a political committee.

In sum, the proposed amendments are replete with deficiencies that render them invalid, illogical and even unconstitutional. They should be rejected *in toto*.

**The Commission's Rulemaking Process Is Flawed**

The prospect that the Commission may substantially change the proposed regulations before finalizing them at the Commission's forthcoming meeting is not a virtue of the rulemaking process, but a vice.

Of course, the Commission is technically exempt from the rulemaking strictures outlined in Arizona Procedure Act (APA).[12] But that makes it all the more disconcerting that such fundamental election law changes could be enacted without basic APA safeguards in place. For example, under the APA "[a]n agency may not submit a rule to the [Governor's Regulatory Review] Council that is substantially different from the proposed rule contained in the proposed rule making." A.R.S. § 41-1025(A). Instead the agency must "terminate a rule making proceeding and commence a new rule making proceeding for the purpose of making a substantially different rule." *Id.* And, "[i]f as a result of public comments or internal review, an agency determines that a proposed rule requires substantial change . . . , the agency shall issue a supplemental notice containing the changes in the proposed rule . . . and shall provide for additional public comment." A.R.S. § 41-1022(E).

If, instead, the Commission plans to hastily alter and then finalize the proposed R2-20-109(F) regulations without sending them back out for public comment, this will only compound

[12] *See* A.R.S. § 16-956(C) ("Commission rule making is exempt from title 41, chapter 6, article 3.")

the predicament. Complete withdrawal of these imprudent regulations is the only way to serve the public interest. This proves why significant election law changes must be made through the Legislature, not by an unelected body.

## Conclusion

The Secretary very much respects the Commission and the important role it plays in Arizona elections. However, the Commission's presently-proposed amendments to R2-20-109(F) are inimical to that electoral system.

It gives the Secretary no pleasure to bring her private objections to the Commission's agenda into public view. But the sweeping nature of these proposals—all of which usurp her constitutional and statutory authority under Arizona law—call for her voice to be added to the growing chorus of objections.

Regardless of whether the Commission believes it has jurisdiction (it does not), it must pause to consider whether it *should* exercise that jurisdiction. Certainly the Commission must recognize the systemic harm it potentially creates by anointing itself as a separate arbiter of Arizona campaign finance law—an arbiter whose decisions may conflict with the Secretary's decisions (which breeds uncertainty and instability) or may be duplicative of the Secretary's decisions (which has the feel of double jeopardy and conflicts with basic notions of fairness and due process). If the Secretary of State had been legislatively displaced from campaign finance—as California voters did in creating the Fair Political Practices Commission—it would be a different story. But since the Secretary serves as the Chief Election Officer in this state, the Commission is obligated to abstain from regulatory encroachment.

Moreover, the fact that the Commission's mission has been judicially circumscribed in recent years is no excuse for inventing a new mission. Only the voters can grant the Commission the expanded jurisdictional reach it seeks to seize here through rulemaking. This is especially the case when regulations seek to squelch—rather than further—free and robust political speech.

For the reasons outlined above, therefore, the Secretary requests the Commission withdraw all proposed amendments to R2-20-109(F).

Very truly yours,
Eric Spencer

State Election Director
Arizona Secretary of State Michele Reagan
(602) 542-8683
espencer@azsos.gov

Home Builders Association
OF CENTRAL ARIZONA
ESTABLISHED 1951

July 9, 2015

**Submitted via comments@azcleanelections.gov**

Chairman Thomas Koester and Commissioners
Citizens Clean Elections Commission
1616 West Adams, Suite 110
Phoenix, AZ 85007

**RE: Proposed Amendments to R2-20-109(F). Independent Expenditure Reporting Requirements.**

Dear Chairman Koester and Commissioners:

On behalf of the Home Builders Association of Central Arizona ("HBACA" or "Association"), please accept the following comments in response to the Citizens Clean Elections Commission's ("CCEC" or "Commission") proposed amendments to R2-20-109(F). The HBACA is a trade association for the residential construction and development industry. Since, 1951, the Association has been representing and serving the collective interests of residential builders and associates through education programs, business development, networking opportunities, issue advocacy, and electioneering, which from time to time includes making independent expenditures. Today, the HBACA represents more than 500 member companies with thousands of employees engaged in all aspects of the residential construction industry.

For the reasons set forth below, the HBACA respectfully requests that the CCEC withdraw or otherwise decline to adopt its proposed amendments to R2-20-109(F).

**I. The HBACA believes that the proposed rule will create regulatory uncertainty and offend basic notions of free speech, free association, and fundamental fairness.**

By inserting itself into the regulation of independent expenditures, the CCEC is seeking to create a regulatory environment where political speech is now dually enforced between the Secretary of State and the CCEC. As a result, there will surely be conflicts in interpretation and enforcement. These conflicts will certainly cause the Association, and others, to have a much more difficult time determining how to follow the rules when exercising our constitutionally protected right to engage in political speech.

Most significantly, the proposed rule would have a chilling effect on the Association's engagement in protected speech through the proposed rule's two options regarding obtaining an exemption to the disclosure requirements. Of course, this is the unstated purpose of the amendment to this rule. However, the United States Supreme Court has long held that the

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government cannot indirectly deter lawful speech which it cannot ban directly by conditioning such speech on the speaker's acquiescence to burdensome consequences.[1]

Under the first option, proposed R2-20-109(F)(6), the HBACA could decline to receive an exemption from the Commission which would then trigger a requirement that we "file the Clean Elections Act independent expenditure reports specified by A.R.S. § 16-941(D) and A.R.S. § 16-958, and comply with the requirements of A.R.S. § 16-913."[2] By requiring compliance with A.R.S. § 16-913, it appears the Commission is requiring all corporations making independent expenditures to comply with the financial disclosure rules regarding political committees. This may potentially require the Association to disclose all of its members and all revenue received through membership dues, assessments, Association activity fees, and other fundraising, even if very little of these revenues and subsequent expenditures are used for independent expenditures or any other activity which seeks to influence the outcome of an election.[3] Also, given the size of the Association's membership, this may include hundreds of transactions *per day*, which would create a tremendous administrative burden.

The second option, under proposed rule R2-20-109(F)(8), would allow the Association to get an exemption from the above disclosure requirements in exchange for allowing the Commission unlimited access to audit the Association.[4] When the HBACA was formed sixty-four years ago, the primary purpose of the Association was, and still is, activities beyond influencing elections. As such, these vast audits would provide the Commission with access to a wide range of information far beyond the scope of regulating independent expenditures or any other activity which seeks to influence the outcome of elections. This is not a power the HBACA is willing to grant the Commission.

Moreover, unlike many of the corporations from which the Commission is seeking disclosure, the HBACA is a membership trade organization. Thus, the compelled disclosure of membership, without a showing that such disclosure would further a legitimate governmental interest[5], may have the effect of infringing upon the free association rights of our members.[6]

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[1] See e.g., *Speiser v. Randall*, 357 U.S. 513, 526 (1958) ("'It is apparent that a constitutional prohibition cannot be transgressed indirectly by the creation of a statutory presumption any more than it can be violated by direct enactment. The power to create presumptions is not a means of escape from constitutional restrictions.'" (quoting *Bailey v. Alabama*, 219 U.S. 219, 239 (1910).)

[2] A.R.S. § 16-913(A) requires political committees to "file campaign finance reports in the format prescribed by the filing officer setting forth the committee's receipts and disbursements according to the schedule prescribed in subsections B and C of this section."

[3] See A.R.S. § 16-915 (contents of campaign finance report required by A.R.S. § 16-913).

[4] See Proposed R2-20-109(F)(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 ....The Commission may audit these entities.").

[5] It has been asserted that the governmental interest in seeking disclosure of those funding independent expenditures is so that voters may have a better understanding of the motives of those seeking to influence the outcome of elections. It stretches the imagination that voters would have a difficult time discerning the interest or motives of the *Home Builders Association* of Central Arizona.

**II. The HBACA believes that the proposed rule exceeds the CCEC's jurisdictional authority.**

As has been pointed out before, enforcement of independent expenditure laws under Arizona's statutory scheme is solely the responsibility of the Secretary of State. Under Title 16, Chapter 6 of the Arizona Revised Statutes, campaign finance enforcement is divided into two separate articles. "Article 1" gives the Secretary explicit authority to regulate all aspects of independent expenditures. This includes the disclosure requirements about the source of independent expenditures; the registration and reporting of independent expenditures; the manner in which political committees, corporations, limited liability companies, and labor organizations can make independent expenditures; and the penalties for failing to comply with the statutes.[7] The Commission has no role in enforcing these statutes.

Rather, the Commission's authority over enforcement and other responsibilities is found in "Article 2. Citizens Clean Elections Act." Voters passed the Clean Elections Act in 1998 to, in part, reform candidate campaign financing. As originally passed, the Commission's interest in regulating independent expenditures flowed naturally from its ability to administer the "matching funds" provision of the Clean Elections Act.[8] However, that provision was struck down by the United States Supreme Court and with it any interest the Commission had in regulating independent expenditures.[9]

Nevertheless, even when the Commission had an interest in regulating independent expenditures, its interest was limited to *whether* an independent expenditure was made, *who benefitted or was harmed* by the independent expenditure, and *the dollar amount* of the independent expenditure.[10] To carry out its stated purpose, the Commission did not need any knowledge of *who* made the expenditure. Further, the independent expenditure reports reviewed by the Commission were filed with the Secretary of State.[11] Quite simply, the Commission's

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[6] See *NAACP v. Alabama*, 357 US 449, 460-61 (1958) ("Effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association, as this Court has more than once recognized by remarking upon the close nexus between the freedoms of speech and assembly. It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of 'liberty' assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech. Of course, it is immaterial whether the beliefs sought to be advanced by association pertain to political, economic, religious or cultural matters, and state action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny."). (Internal citations omitted).

[7] A.R.S. §§ 16-912; -914.02; -917; -920.

[8] See *Arizona Free Enter. Club's Freedom Club PAC v. Bennett*, 131 S.Ct. 2806, 2814 (2011) ("[s]pending by independent groups on behalf of a privately funded candidate, or in opposition to a publicly funded candidate [could] result in matching funds for other publicly financed candidates in a race.") (citation omitted)).

[9] *Id.*

[10] See A.R.S. § 16-941(D).

[11] Id. ("Notwithstanding any law to the contrary, any person who makes independent expenditures relating to a particular office cumulatively exceeding five hundred dollars in an election cycle...shall file reports *with the secretary of state* in accordance with section 16-958 so indicating, identifying the office and the candidate or group of candidates whose election or defeat is being advocated and whether the person is advocating election or advocating defeat.") (emphasis added); see also A.R.S. § 16-958 ("The secretary of state shall immediately notify

proposed rules on independent expenditures exceed its statutory authority and therefore should be withdrawn.

**III. The HBACA believes that the proposed rule has been promulgated through a flawed rulemaking process.**

While we fully understand that the CCEC is not required to follow the rulemaking requirements outlined in the Administrative Procedures Act[12], basic notions of due process and transparency reveal fundamental flaws in the CCEC's rulemaking process. Most notably, the Commission has failed to publish the rule in its final form. Having engaged in rulemaking at all levels of government as both the President and Executive Director of the HBACA and as a member of the Governor's Regulatory Review Council, it is deeply troubling that any agency would propose a rule that fundamentally alters an understood regulatory process, substantially amend the proposed rule, and then adopt the amended rule without ever allowing for additional public comment.[13] Yet that is precisely what the CCEC appears to be doing.

The HBACA has long prided itself on its willingness to engage in political speech within the confines of the law. However, with this rule and its subsequent unfettered authority of the CCEC to examine all aspects of the Association's operations (which are quite clearly much more far reaching than simply seeking to influence the outcome of elections), the CCEC is unreasonably infringing upon our right to engage in such speech. For the reasons set forth above, we respectfully request that the Commission withdraw or otherwise decline to adopt the proposed amendment to R2-20-109.

Very truly yours,

Connie Wilhelm
President and Executive Director
Home Builders Association of Central Arizona

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the commission of the filing of each report under this section and deliver a copy of the report to the commission....").

[12] See A.R.S. § 16-956(C)("Commission rulemaking is exempt from title 41, chapter 6, article 3.")

[13] For example, under the Administrative Procedures Act, "[a]n agency may not submit a rule to the council that is substantially different from the proposed rule contained in the notice of proposed rulemaking or a supplemental notice filed with the secretary of state pursuant to section 41-1022." A.R.S. § 41-1025.

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**Alec Shaffer**

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|---|---|
| **From:** | Tom Jenney <TJenney@afphq.org> |
| **Sent:** | Wednesday, June 24, 2015 9:14 AM |
| **To:** | CCEC Mailbox |
| **Subject:** | Comments re AZ Admin Code R2-20-109(F)(6) and (12) |
| **Attachments:** | afpazcleanelections24june2015signed.pdf |

24 June 2015

Dear Commissioners:

Attached are comments from the Arizona chapter of Americans for Prosperity in regard to proposed rule changes on independent expenditures and political committees.

For Liberty & Prosperity, Tom

Tom Jenney | State Director | Americans for Prosperity Foundation – AZ
m: 602.478.0146 | e: tjenney@afphq.org | @ArizonaAFP



PUBLIC COMMENT

AMERICANS FOR PROSPERITY.

ARIZONA

One East Camelback Road | Suite 550 | Phoenix AZ 85012 | P: (602) 478-0146 | InfoAZ@Afphq.Org

**June 24, 2015 – BY EMAIL (comments@azcleanelections.gov)**

Arizona Clean Elections Commission
1616 W. Adams, Suite 110
Phoenix, AZ 85007

Re: Comments regarding the Commission's proposed rule changes

Dear Commissioners:

The Arizona chapter of Americans for Prosperity, on behalf of itself and its more than 98,000 grassroots activists in Arizona (collectively, "AFP-AZ"), submits these comments in response to the changes to the Clean Elections Commission's regulations proposed on May 14, 2015. AFP-AZ is particularly concerned about the proposed provisions on independent expenditures and political committees.[1]

AFP-AZ strongly urges the Commission not to proceed with these rules as proposed. The rules far exceed the Commission's statutory authority. While seeking to regulate activity beyond its mandate, the Commission through these vague and overbroad rules would deter citizens from exercising their First Amendment rights to advocate on important public policy issues, diminishing politicians' accountability to their constituents. All of this is contrary to the Commission's mandate "to restore citizen participation and confidence in our political system."[2]

## INTRODUCTION

AFP-AZ is comprised of the more than 98,000 Americans for Prosperity grassroots activists who live and work in Arizona.[3] Americans for Prosperity is a non-partisan, non-profit organization with more than 2.3 million grassroots activists nationwide who work to persuade public officials to embrace an agenda of economic freedom, to educate our friends and neighbors on the issues shaping our economy, and to involve everyone in building a culture of freedom and opportunity at the local, state, and federal levels.

## COMMENTS

The Commission has no legal authority to vastly expand the reach of its existing rules it has proposed. This is a classic case of regulatory overreach and agency mission creep. It is particularly harmful when that overreach comes at the expense of the right to speak out on policy and political issues.

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[1] Proposed Ariz. Admin. Code R2-20-109(F)(6) and (12).
[2] Ariz. Clean Elections Comm'n, "What Is Clean Elections?", *at* http://www.azcleanelections.gov/about-us.
[3] AFP-AZ is not a separate legal entity from Americans for Prosperity.

Inherent in the system of separation of powers in American government is the bedrock principle that unelected executive branch administrative agencies may not usurp the lawmaking power of the elected legislative branch. As the Arizona Court of Appeals has explained, "a rule adopted by an administrative agency must be in accordance with the statutory authority vested in it, must be reasonable, and must be adequately related to the purpose of the act and neither arbitrary nor in contravention of any expressed statutory provision."[4]

The Secretary of State is Arizona's chief elections official and has broad responsibility and authority with respect to the state's campaign finance laws.[5] By contrast, the Clean Elections Commission was created for the sole purpose of administering the Clean Elections public financing system for candidates for the state Legislature and statewide offices.[6] The statute gives the Commission two very limited grants of rulemaking authority:

(1) To adopt rules regarding *the transmittal of independent expenditure reports filed with the Secretary of State* to the Commission and to candidates participating in the Clean Elections program;[7] and

(2) To adopt rules "to carry out the purposes" of the Clean Elections program and "to govern procedures of the [C]ommission."[8]

The first grant of rulemaking authority related to an original feature of the Clean Elections program whereby participating candidates would receive varying amounts of additional public funding if they were subjected to independent expenditures opposing them. The U.S. Supreme Court held that this scheme was unconstitutional and invalidated it four years ago.[9] Since the Supreme Court's ruling – which mooted the Commission's role in receiving and transmitting independent expenditure reports to publicly funded politicians – the Commission has had no authority whatsoever to implement or enforce any regulations regarding independent expenditure reports.[10]

Moreover, the Commission has never had the statutory authority to impose additional *substantive* requirements for independent expenditure reports – even before the public funding program was declared unconstitutional. The statute specifies what information must be contained

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[4] *Grove v. Ariz. Crim. Intelligence System Agency*, 143 Ariz. 166, 169 (Ariz. Ct. App. 1984).While the statute exempts the Commission's rulemaking procedures from certain of the procedural requirements applicable to Arizona government agencies generally, *see* Ariz. Rev. Stat. § 16-956(C), it certainly does not exempt the Commission from the general common law prohibition against administrative agencies usurping the Legislature's lawmaking authority.

[5] *See, e.g.*, Ariz. Rev. Stat. §§16-924, 16-914.02, 41-121(A)(6).

[6] Ariz. Rev. Stat. § 16-956.

[7] *Id.* § 16-956(A)(6); *see also id.* §§ 16-958(D) and (E) and 16-941.

[8] *Id.* § 16-956(C).

[9] *Ariz. Free Enterprise Club's Freedom Club PAC v. Bennett*, 131 S. Ct. 2806 (2011).

[10] Specifically, the Clean Elections Act required corporations making independent expenditures exceeding $500 during an election cycle to file reports under Ariz. Rev. Stat. §§ 16-941(D) and 958 unless, per the current rules at Ariz. Admin. Code R2-20-109(F), they (1) complied with the independent expenditure reporting requirement under the general campaign finance statute at Ariz. Rev. Stat. § 16-914.02 (with a threshold of $5,000); and (2) sought an exemption from filing additional reports from the Commission. However, the decision in *Ariz. Free Enterprise Club's Freedom Club PAC* mooted that separate requirement to file independent expenditure reports under the Clean Elections Act.

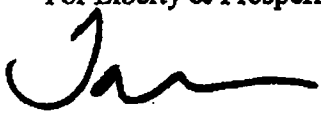
in independent expenditure reports under a section of the law that is completely separate from the Citizens Clean Elections Act,[11] and the Commission is not free to impose its own additional requirements for what information those reports must contain, as the proposed rules purport to do.[12]

Similarly, the Commission has no statutory authority to issue regulations that would determine when an entity has the "primary purpose" of being a political committee, as the proposed rule purports to do.[13] Again, the definition and obligations of a political committee are contained in a section of the statute that is completely separate from the Citizens Clean Elections Act, and those issues are thus beyond the Commission's authority to regulate.[14] Indeed, the Arizona Legislature recently exercised its power to define "political committee" when it adopted HR 2649, and it did not grant the Commission any new rulemaking authority on the subject.

## CONCLUSION

The Commission lacks the legal authority to implement its proposed rules, which appear to be an attempted end-run around both the Legislature and the Secretary of State. No agency can or ever should act outside its statutory authority. It is a cornerstone of democracy that elected leaders decide the laws to be implemented by regulatory agencies. The Commission cannot undo a legislative enactment with which it disagrees. It is especially damaging for an agency to act outside its authority to limit citizens' ability to comment on policy issues and urge adoption of them. If unelected regulators can silence speech, those regulators can seize control of the governing process from both elected leaders and voters. The Commission should not proceed down that path. For these reasons, AFP-AZ strongly urges the Commission not to adopt these rules.

For Liberty & Prosperity,



Tom Jenney
Arizona State Director

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[11] Ariz. Rev. Stat. § 16-914.02.

[12] *See* proposed Ariz. Admin. Code R2-20-109(F)(6) (purporting to require certain independent expenditure reports to include the additional information set forth in Ariz. Rev. Stat. § 16-913).

[13] *See* proposed Ariz. Admin. Code R2-20-109(F)(12).

[14] *See* Ariz. Rev. Stat. §§ 16-901(19), -901.01, -901.02, -913, -915.

**COMMENT REGARDING PROPOSED CHANGE TO R2-20-109**

**BY**

**ARIZONA CHAMBER OF COMMERCE AND INDUSTRY**

**GREATER PHOENIX CHAMBER OF COMMERCE**

**GREATER PHOENIX LEADERSHIP**

**ARIZONA SMALL BUSINESS ASSOCIATION**

**ARIZONA ASSOCIATION OF REALTORS**

**ARIZONA CATTLEMEN'S ASSOCIATION**

**ARIZONA HOSPITAL AND HEALTHCARE ASSOCIATION**

**ARIZONA CHAPTER ASSOCIATED GENERAL CONTRACTORS**

**ARIZONA TAX RESEARCH ASSOCIATION**

**ARIZONA BUSINESS COALITION**

**VALLEY PARTNERSHIP**

Dear Commissioners:

The Arizona Chamber of Commerce and Industry, Greater Phoenix Chamber of Commerce, Greater Phoenix Leadership, Arizona Small Business Association, Arizona Association of Realtors, Arizona Cattlemen's Association, Arizona Hospital and Healthcare Association, Arizona Chapter Associated General Contractors, Arizona Tax Research Association, Arizona Business Coalition and Valley Partnership ("Arizona Business Community") submits this comment to express concern regarding the proposed change to R2-20-109(f)(12) by the Citizens Clean Election Commission ("Commission"). These organizations are nonpartisan, nonprofit organizations that advocate for the interests of the Arizona business community.

The Arizona Business Community strongly urges the Commission not to adopt the proposed regulation as drafted. At the outset, the Arizona Business Community is deeply concerned with the fact that the Commission has yet to publish the proposed regulation in a final draft form. The Commission may be exempt from typical rulemaking procedures under Arizona administrative law, but the fact that the Commission may present one version of this proposed rule for public comment and adopt a wholly different version later – without explanation or an opportunity for the general public to evaluate and comment on the final version – offends basic ideas about due process and fairness. Indeed, if the Commission intends to continue asserting jurisdiction over non-participating candidate committees (i.e., candidates that do not voluntarily

opt-in to the Commission's jurisdiction), it may be time reevaluate the Commission's exemption from standard rulemaking procedural law.

Although extremely confusing in its current form, the proposed rule appears to create a presumption that any group or organization formed "within six months immediately preceding the beginning of a legislative election cycle," or that is "formed or created during the election and knowingly makes expenditures or takes contributions of $500 or more for any election in this state in a calendar year" is primarily organized for the purpose of influencing elections and therefore a political committee under Arizona law. [1] This proposed rule upsets settled understandings about the scope of the Commission's authority and is directly contrary to the statutory definition of "political committee."

The elected Arizona Secretary of State, and not the Commission, has primary statutory authority to regulate non-participating candidates and political committees.[2] The establishment of the Commission did not divest the Secretary of State of her position as Arizona's chief election officer. Indeed, although ignored in recent elections, the Commission's sole purpose is to regulate expenditures by *participating* candidates. [3] The Arizona Business Community and its members, therefore, take issue with Commission's authority to promulgate this proposed rule, which is clearly beyond its statutory power to enforce.[4] Simply, it is the business community's interest to have clear laws that are enforced by governmental agencies that have clear jurisdiction and are eventually accountable to elected officials and the general public.[5] As the Commission was envisioned to only have jurisdiction over individuals who opted into its jurisdiction, such an unprecedented extension of an agency that is not beholden to the general public and elected officials is quite concerning to the interests of democracy. It is in the business community's interests to ensure such safeguards are in-place.

Moreover, the proposed rule would subject Arizona businesses and non-profit entities to duplicative and potentially conflicting regulations between the Commission and the Secretary of State. Efforts to enforce this rule will disrupt the business community's expectation that the Secretary of State is the sole regulator of political committees. There is the further potential that the two bodies could issue conflicting regulations regarding political speech. The resulting confusion will make it harder for businesses to predict how their Constitutionally protected political speech will be treated. This confusion may also have a chilling effect on the formation of groups and associations in Arizona.

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[1] R2-20-109(f)(12)(a).

[2] A.R.S. § 16-916, 924(A).

[3] A.R.S. § 16-940 *et seq.*

[4] *Arizona State Bd. Of Regent ex rel. Arizona State University v. Arizona State Personnel Bd.*, 195 Ariz. 173, 175, 985 P.2d 1032, 1034 (1999) (Arizona agencies have no power beyond the scope of their enabling statutes).

[5] For example, Sections 109(F)(6) and (8) of the proposed rule would subject entities to burdensome reporting requirements in addition to those reports already mandated by the Secretary of State. Arizona businesses have a right to know precisely when and how their lawful political activities may subject them to the added expense of filing reports with two state agencies.

Beyond jurisdictional issues, the proposed rule's vague draftsmanship makes it difficult for the business community to understand when and how entities will be presumptively subject to the Commission's authority. Specifically, the proposed rule turns on a problematic assumption that – notwithstanding an entity's good standing as a charity or social welfare organization under federal tax law – *any* organization is primarily political in nature simply based on the timing of its formation. But, nothing in the applicable statutes or regulations provides guidance on when "six months immediately preceding the beginning of a legislative election cycle" actually takes place. A.R.S. § 16-691(B)(1) defines "election cycle" as "the period between successive general elections for a particular office." Therefore, it is wholly unclear when and how the Commission's proposed presumption is even operative. Arizona's business community should not have to retain counsel in order to calculate when and how such vague and overly burdensome regulations on Constitutionally protected political speech apply.

During the last election cycle, Arizona businesses and properly incorporated entities were forced to endure enough confusion with regard to the regulation of constitutionally protected political free speech by the state. Last fall, the U.S. District Court in *Galassini v. Town of Fountain Hills* invalidated the statutory definition of "political committee" because it was unconstitutionally vague and overbroad.[6]

In response, the Arizona Legislature acted quickly, passing H.B. 2649 to re-enact this foundational term of the election code with a clarified definition that tracks the recommendations of the *Galassini* opinion. Nothing in this new statute provides the Commission, or any other non-elected governmental agency, with the authority to enact a rule with such far-reaching presumptions concerning political activity as the one at issue here. Tying itself to the calendar, the presumption crushes the flexibility and analysis that H.B. 2649 provides. Even Mr. Collins believes that this public comment period will support a change from the using time of formation as a presumption to use as a factor in the analysis.[7] In light of this statement, any substantial changes to the proposed rule should be re-publicized for general comment and should address what, if any, statutory authority the Commission relies upon for the proposed rule. Simply, the Commission is not able to insert itself as both the Arizona Legislature and the Arizona Secretary of State in not only creating laws, but then enforcing those same laws. The business community expects the government to respect the separation of powers and allow certainty from the laws that are dully voted on by the Arizona Legislature and signed by the Governor. In the proposed rule, the Commission is going too far.

We strongly recommend against the adoption of the proposed rule. Its shaky legal foundation and vagueness are almost certain to generate more litigation and keep Arizonans guessing as to when and how they may exercise their First Amendment right to speak out on political matters. This rule is bad for business, and worse for free speech.

We look forward to an opportunity to address these issues at the open meeting.

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[6] *Galassini v. Town of Fountain Hills*, No. CV-11-02097-PHX-JAT, 2014 WL 6883063, at *7 (D. Ariz. Dec. 5, 2014).

[7] *CEC Rule Goes Forward, But With Willingness to Change*, YELLOW SHEET REPORT 1, May 14, 2015.

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**Alec Shaffer**

| | |
|---|---|
| **From:** | Wang, Eric <EWang@wileyrein.com> |
| **Sent:** | Wednesday, June 24, 2015 8:27 AM |
| **To:** | CCEC Mailbox |
| **Cc:** | Alec Shaffer; Thomas Collins; Mike Becker; David Keating |
| **Subject:** | Center for Competitive Politics comments on proposed rulemaking |
| **Attachments:** | Comments on CEC rulemaking.pdf |
| **Importance:** | High |

Alec,

Attached, please find comments from the Center for Competitive Politics regarding the Commission's proposed changes to its rules, especially with respect to the regulation of independent expenditures and political committees. We argue that the proposed changes are unconstitutionally vague and overbroad.

Based on the agenda for today's meeting, it looks like the commissioners may be discussing the proposed rules. We would very much appreciate it if you could circulate our comments to the commissioners before their meeting starts this morning.

Thank you for your assistance on such short notice.

**Eric Wang**
**Attorney At Law**
**Wiley Rein LLP**

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**PUBLIC COMMENT**

June 24, 2015

**BY EMAIL (comments@azcleanelections.gov)**

Arizona Citizens Clean Elections Commission
Attn. Alec Shaffer
1616 W. Adams, Suite 110
Phoenix, AZ 85007

Re: Comments regarding proposed changes to Ariz. Admin. Code R2-20-109(F)

Dear Commissioners:

The Center for Competitive Politics ("CCP")[1] submits these comments in response to the Commission's May 14, 2015 proposed changes to its rules purporting to regulate independent expenditures and political committees in Arizona. CCP shares the Arizona Secretary of State's strong concerns about the Commission's lack of statutory authority to regulate these issues. Nevertheless, CCP focuses its present comments on the proposed rules' unconstitutional vagueness and overbreadth under the First Amendment.

While vague regulations must be avoided as a general matter,[2] it is especially essential that regulations concerning political speech be as precise as possible. As the U.S. Supreme Court has stated, "[W]here a vague statute 'abut[s] upon sensitive areas of basic First Amendment freedoms,' it 'operates to inhibit the exercise of [those] freedoms.' Uncertain meanings inevitably lead citizens to 'steer far wider of the unlawful zone . . . than if the boundaries of the forbidden areas were clearly marked.'"[3] Additionally, unless there is a "'substantial relation'

[1] The Center for Competitive Politics is a nonpartisan, nonprofit 501(c)(3) organization that promotes and protects the First Amendment political rights of speech, assembly, and petition. It was founded in 2005 by Bradley A. Smith, a former Chairman of the Federal Election Commission. In addition to scholarly and educational work, the Center is actively involved in targeted litigation against unconstitutional laws at both the state and federal levels. For instance, it presently represents nonprofit, incorporated educational associations in challenges to state campaign finance laws in Colorado and Delaware and recently won a case in the Nevada Supreme Court. It is also involved in litigation against the state of California.

[2] *See Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972) ("It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined. Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them.").

[3] *Id.* at 109 (internal citations omitted).

between the disclosure requirement and a 'sufficiently important' governmental interest," a regulation burdening political speech with reporting requirements is unconstitutionally overbroad.[4]

Even if the Commission has the legal authority to enact the proposed changes to Ariz. Admin. Code R2-20-109(F) with regards to independent expenditure reports and political committees (which, as the Secretary of State argues, the Commission does not have), the proposed rules still fail on account of their vagueness and overbreadth.

First, the Commission's proposed rule is unclear as to whether sponsors of independent expenditures would be required to report on the same basis as political committees. The proposal purports to require sponsors of independent expenditures to "comply with the requirements of [Ariz. Rev. Stat.] § 16-913."[5] That section of the statute sets forth the reporting obligations for political committees, which are required to file ongoing periodic reports and special pre- and post-election reports. If the Commission's intent is that all sponsors of independent expenditures must register and report as political committees, then its rules should say so clearly and explicitly.

The reporting obligations for political committees are not only frequent, they are also substantively burdensome. Political committees must report detailed summaries of all of their contributions and disbursements, as well as itemized contribution and disbursement information, including the name of each individual who has given more than $50 to the committee for an election.[6] If the intent of the proposed rule is, in fact, to require independent expenditure sponsors that are not political committees to report as political committees, the proposal is unconstitutionally overbroad.[7]

Second, the Commission's proposed rule for determining whether an entity has the "primary purpose" of being a political committee is unintelligible, and could be read in any number of ways.[8] Under the most plausible reading, the proposal appears to require an entity's "primary purpose" to be determined over the course of an "election cycle."[9] The statute defines

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[4] *Citizens United v. FEC*, 558 U.S. 310, 366-67 (2010).

[5] Proposed Ariz. Admin. Code R2-20-109(F)(6).

[6] Ariz. Rev. Stat. § 16-915.

[7] *See, e.g., Wis. Right to Life, Inc. v. Barland*, 751 F.3d 804 (7th Cir. 2014) (holding that Wisconsin's regulation imposing political committee-like registration, reporting, and other requirements on all organizations that made independent expenditures was unconstitutional as applied to organizations not engaged in express advocacy as their major purpose).

[8] *See* proposed Ariz. Admin. Code R2-20-109(F)(12)(b).

[9] Other possible interpretations are: (1) An organization's primary purpose may be determined over any period of time, but a "primary purpose other than influencing the result of any election" may be determined only over the course of an election cycle; (2) An entity must "maintain[]" records of its primary purpose, and the length of the recordkeeping requirement is for an election cycle; (3) Any entity must "maintain[]" a "[p]rimary purpose *other than* influencing the result of any election . . . during each election cycle," which therefore would prohibit political committees altogether, as well as candidates' campaign committees, party committees, and most political activity

an "election cycle" as "the period between successive general elections *for a particular office*."[10] Because the terms of a "particular office" vary in Arizona,[11] and because the proposed regulations also require consideration of activity related to initiatives and referenda, as well as recall and retention elections, it is impossible to determine *which* election cycle is to be applied in determining an organization's "primary purpose" at any given time.

Even if the "election cycle" concept were to be given a fixed meaning, it is still overly broad to regulate a group as a political committee on such basis. As the U.S. Supreme Court has noted, "the distinction between discussion of issues and candidates and advocacy of election or defeat of candidates may often dissolve in practical application."[12] The most salient issues tend to vary from one election to another, and thus an advocacy group focused on a limited number of issues may be more active during particular "election cycles" (however that term is defined) in which their issues feature most prominently than in other "election cycles." That does not mean, however, that the group's overall "primary purpose" is to affect the outcome of elections.

Relatedly, a legislative issue may arise suddenly, and citizens may wish to band together quickly to speak about that issue. The proposal to regulate as a political committee any entity that is formed during a legislative election cycle, or in the immediately preceding six months, if the entity makes expenditures or accepts contributions of $500 or more, unfairly favors established speakers and greatly impedes the formation of new groups.[13]

If a legislative issue is closely associated with particular politicians, a group that has just formed to address that issue should not be subject to greater reporting burdens than a preexisting group if both groups sponsor a few expenditures advocating for or against those politicians. The Commission's proposal to treat new and preexisting groups differently, even if they engage in the same type of speech, violates a basic principle of fairness, as well as the First Amendment. As the U.S. Supreme Court has stated, "the First Amendment generally prohibits the suppression of political speech based on the speaker's identity."[14]

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generally. The core difficulty with the proposed language is that the second sentence of R2-20-109(F)(12) does not seem to follow the first sentence in that paragraph and, when read in isolation, the second sentence does not make much sense.

[10] Ariz. Rev. Stat. § 16-961(B)(1) (emphasis added). The Commission's regulations do not further define this term. *See* Ariz. Admin. Code 2-20-101.

[11] *See, e.g.*, Ariz. Const. Art. 4, Pt. 2, § 21 (providing for two-year terms for state legislators) and Art. 5 §1 (providing for four-year terms for statewide elected officials).

[12] *Buckley v. Valeo*, 424 U.S. 1, 42 (1976).

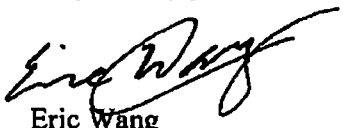
[13] *See* proposed Ariz. Admin. Code R2-20-109(F)(12)(a).

[14] *Citizens United*, 558 U.S. at 350.

As the U.S. Supreme Court also has noted, "PACs are burdensome . . . expensive to administer and subject to extensive regulations."[15] Thus, treating advocacy groups as political committees by evaluating their "primary purpose" only within the arbitrary and limited temporal snapshot of a single "election cycle," or presuming that groups formed within certain time windows are political committees, as the Commission's proposed rule would do, is unduly burdensome and overly broad. Instead, a more holistic approach is needed to determine an organization's "primary purpose."

For these reasons, CCP implores the Commission not to adopt the proposed rules.

Respectfully yours,



Eric Wang
Senior Fellow[16]
Center for Competitive Politics

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[15] *Id.* at 337. Although the Supreme Court was discussing specifically the regulation of PACs under federal law, the regulation of PACs under Arizona law is substantially similar. *See, e.g.*, Ariz. Rev. Stat. §§ 16-902, -902.01, -902.02, -913, -915.

[16] Eric Wang is also Special Counsel in the Election Law practice group at the Washington, DC law firm of Wiley Rein, LLP. Any opinions expressed herein are those of the Center for Competitive Politics and Mr. Wang, and not necessarily those of his firm or its clients.

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July 8, 2015

**VIA E-MAIL (.pdf attachment) - Thomas.Collins@azcleanelections.gov**
Thomas Collins, Esq.
Executive Director
CITIZENS CLEAN ELECTIONS COMMISSION
1616 West Adams Street, Suite 110
Phoenix, Arizona 85007

**Re: Comments on Rule Package**

Dear Tom:

Thank you for considering this public comment on the amendments to the rules published for comment in the May 2015 Commission meeting. As you know, but others reading this letter may not, I had the honor of serving as drafter of the Arizona Citizens Clean Elections Act, and I have remained involved in drafting rules and assisting in litigation over the years. I served for six years as a Commissioner (2009-14) and one year as Commission Chair (2013). I am also current chair (since 2014) of Arizonans for Clean Elections, an non-partisan association that drafted the Clean Elections Act and worked to secure its passage. *See* A.R.S. § 16-960 (ACE given standing to intervene to defend the Act's validity).

I generally support the proposed rules because I believe that the Commission has the responsibility to signal to the public how it intends to interpret various statutes that the Commission has the duty to enforce.

In preparing this set of comments, I have studied comments provided to the Commission last month by the so-called "Americans for Prosperity Foundation – AZ" ("not a separate legal entity from Americans for Prosperity"), which was written by its State Director Tom Jenney. Americans for Prosperity is an organization chaired by one of the notorious Koch brothers, and that organization apparently has, as one of its goals, the protection of "Dark Money" contributions. Although advocating for protection of Dark Money may be in the private and commercial interest of the Kochs and perhaps some other billionaires, it is neither pro-American or pro-Prosperity to take that position.

I discuss Mr. Jenney's letter because his comments to the Commission are flatly wrong, and I ask that the Commission realize the errors. Mr. Jenney writes that the Commission was "created for the sole purpose of administering the clean elections public finance system for candidates ..." (Jenney, n.6) and, from that premise, argues that the Commission "has no legal authority to vastly expand the reach of its existing rules," calling promulgation of these rules "a classic case of regulatory overreach and agency mission creep."

Mr. Jenney's premise is utterly false. As a historical matter, the citizen authors of the Clean Elections Act *not only* intended to allow an option for candidates to run without being beholden to big donors, *but also* intended to enact more timely and complete reporting of campaign money. The Act contains extensive provisions requiring additional reporting, at times earlier than required before the Act. The Commission should never forget its duty to enforce those disclosure provisions equally with the financing parts of the Act.

For example, and notably for purposes of the discussion of these rules, A.R.S. § 16-941(D) says, "Notwithstanding any law to the contrary, any person who makes independent expenditures related to a particular office cumulatively exceeding five hundred dollars in an election cycle, with [certain] exception[s] ..., shall file reports with the secretary of state in accordance with section 16-958 so indicating, identifying the office and the candidate or group of candidates whose election or defeat is being advocated and stating whether the person is advocating election or advocating defeat."

The reference to "any person" is unmistakable. That part of the Act clearly does not apply just to clean elections "participating" candidates.

Likewise A.R.S. § 16-958(A) says, "Any person who has previously reached the dollar amount specified in section 16-941, subsection D for filing an original report shall file a supplemental report each time previously unreported independent expenditures specified by that subsection exceeds one thousand dollars."

Here too, the reference to "any person" cannot be overlooked or ignored.

The inclusion of corporate and other entities in the definition of "persons" in the federal Bill of Rights has been controversial (although clarified by the well-known *Citizens United* decision). But Arizona law contains no doubt that "persons" includes corporate and other entities. *See* A.R.S. § 1-215(28) ("'Person' includes a corporation, company, partnership, firm, association or society, as well as a natural person"); *accord* Commission Rule R2-20-101(21). So, the references in the Act to "any person" certainly include corporations and LLCs (or other entities).

The following additional provisions of the Act similarly define reporting requirements that go beyond the candidate-financing system to which Mr. Jenney pretends the Clean Elections Act is limited:

- A.R.S. § 16-958(B) defines the *frequencies* of reports required,
- A.R.S. § 16-958(E) establishes *electronic* reporting requirements,
- A.R.S. § 16-958(F) requires the Commission to establish rules for public inspection of bank accounts and campaign finance reports, and financial records of "all candidates" (*i.e.*, those participating in the Clean Elections system or not),
- A.R.S. § 16-942(B) establishes a "civil penalty for a violation by or on behalf of any candidate of any reporting requirement imposed by this chapter"; and
- At the time the voters enacted the Clean Elections Act, additional provisions of the Act, since removed, clarified that "participating candidates" too were required to file reports under -958.

A related false premise is the notion that the Commission has no jurisdiction over the conventional campaign finance reporting system in Article 1 of Chapter 6 of Title 16, which Mr. Jenney's letter references as being within the domain of the Secretary of State.

To the contrary, certain provisions of the Clean Elections Act explicitly give the Commission duties with respect to that article:

- A.R.S. § 16-942(B) specifies that the Commission should apply the specified "civil penalty" to violations of "any reporting requirement imposed by this chapter," and the term "chapter" refers to both the Clean Elections Act and the "general provisions" in Article 1 that contain conventional campaign finance registration and reporting requirements (*see* A.R.S. §§ 16-913, -916).
- A.R.S. § 16-901.01 was enacted through the Clean Elections Act and placed in Article 1 by our Act; this section defines "express advocacy" in a way that reduces certain exceptions from registration and disclosure under both articles of Chapter 6 (*see* §§ 16-901(14); 16-912; 16-915; 16-941(D); 16-958(A)).

All of the above-listed provisions implement purposes other than "only" administration of the candidate-financing system. The voter purposes in passing these provisions included (1) allowing stricter enforcement of campaign finance disclosure – by the Commission as opposed to partisan politicians, and (2) providing the public with added and more timely disclosure of contributions and expenditures.

The Arizona Supreme Court likewise concluded – to the direct contrary of Mr. Jenney's letter – that the voters gave the Commission a "paramount" duty to conduct independent enforcement of the Act that "do[es] not relate to the public funding of political campaigns." *Clean Elections Institute, Inc. v. Brewer*, 209 Ariz. 241, 245 ¶ 13, 99 P.3d 570, 574 (2004) (*abrogated on other grounds Arizona Together v. Brewer*, 214 Ariz. 118, 149 P.3d 742 (2007) (relating to test for separate amendment rule)).

In sum, the Commission has a duty to enforce the Act, and the Act requires not only an option for candidates to obtain financing but also requires more "sunshine" into campaign-finance. That "Dark Money" fans wish such provisions did not exist is no reason for the Commission to overlook these parts of the Act. The Commission is sworn to enforce the *whole* Clean Elections Act, and an argument like Mr. Jenney's should be exposed for the canard that it is.

Mr. Jenney's letter also says that "American government" contains a "bedrock principle that unelected executive branch administrative agencies may not usurp the

lawmaking power of the elected legislative branch." This comment reveals Mr. Jenney's lack of understanding of both the role of the Commission and its position in Arizona government and the nature of legislative power in Arizona.

First, according to the Arizona Constitution, "The legislative authority of the state shall be vested in the legislature, ... ***but the people reserve the power to propose laws ... and to enact or reject such laws and amendments at the polls, independently of the legislature***." Ariz. Const., Art. IV, sec. 1(1) (emphasis added). That is exactly the path that the people of Arizona selected in passing the Clean Elections Act. The Commission's enforcement of the law does nothing to "usurp" the Legislature's "lawmaking power"; it is the *Legislature* that (sometimes) seeks to "usurp" the *People's* lawmaking power by challenging the Commission, and Mr. Jenney's letter does so too.

Second, the Commission is not part of the "executive branch." It is an independent, non-partisan administrative agency that does not report to the partisan Governor or the partisan Secretary of State in the executive branch. Although "Americans for Prosperity" might wish to have influence over the Commission through Koch funding of partisan politicians, the Commission should not share that goal and should remember its successful tradition of strict political independence.

The Commission's rule-making authority is specified by A.R.S. § 16-956(A)(7), which says, "The Commission shall ... Enforce this article, ... [and] monitor reports filed pursuant to this chapter and financial records of candidates as needed ...." Here, too, "this chapter" refers to both Article 1 (general provisions) and Article 2 (the Clean Elections Act). So, the Commission is tasked, generally and explicitly, with monitoring general campaign reports filed under Article 1 and with enforcing Article 2.

Enforcing Article 2 includes enforcing A.R.S. § 16-942(B), which calls on the Commission to apply the specified "civil penalty" to violations of "any reporting requirement imposed by this chapter." Thus, if the Commission's required monitoring of Article 1 reports uncovers a failure to report, or if a complaint is filed with the Commission about unreported independent expenditures violating A.R.S. § 16-941(D), then the Commission has authority – and the duty – to impose the penalties in the Act. The civil fines specified in A.R.S. § 16-942(B) of the Act as a penalty for violation of "this

chapter" done "by or on behalf of any candidate of any reporting requirement" should and must be enforced.

The Commission has already established rules, rightly, holding that violations of A.R.S. § 16-941(D) by persons making independent expenditures but not reporting them are subject to the penalty provision of -942(B). Accordingly, the current proposed rules do not "vastly expan[d]" prior rules, as Mr. Jenney claims.

Nor do the proposed rules amount to "regulatory overreach and agency mission creep," Mr. Jenney's other claim. To the contrary, the Commission has the power, and the ***responsibility***, to enforce ***all*** of its "paramount" duties, including its duty to conduct independent enforcement of the Act that "do[es] not relate to the public funding of political campaigns."

For the above reasons, I strongly urge the Commission to do its best to continue to enforce the non-financing portions of the Clean Elections Act, particularly the Commission's duty to enforce disclosure of independent expenditures as expressly contemplated by the Act since its inception.

The rules being considered now would help the public, including committees making independent expenditures, by enacting rules making clear how the Commission intends to exercise its enforcement powers. That is both proper and wise, and I encourage the Commission to continue its work in that area.

That said, I have a number of suggestions for improvements of the rules as proposed, which I hope the Commission considers constructive. Please note the following comments:

R2-20-109(D)(2): Automobile expenses

Suggestion 1: I believe this provision should be reworded in a way to make it clear that reimbursement can occur under either part a or part b but not both.

Suggestion 2: I believe both subsections should apply to candidate-owned automobiles as well as those of third parties. As proposed, part b is limited to candidate-owned automobiles.

Suggestion 3: I believe that this part 2 should apply both to automobiles as well as other vehicles, especially motorcycles, which might not be properly called "automobiles." I suggest substituting the term "motor vehicles."

Suggestion 4: In new part b, I recommend changing the word "fuel" to something more encompassing. For example, electric vehicles are becoming more common, and they are environmentally helpful and should not be discouraged. So too are hydrogen-powered or other "alt fuels" vehicles. The State should allow payment for electrical charging costs equally with "fuel" for combustion-powered vehicles. Unfortunately I cannot think of any simple one-word substitute. It might be possible to refer explicitly to electrical charging costs or fuel, or to refer more generally to "fuel or a recognized substitute expended for furnishing the vehicle with motive power."

Suggestion 5: Also in new part b, I recommend requiring that the records kept not only should provide information on the "trip" in question, as specified in the proposed rule, but also should list the total miles traveled using the direct "fuel" purchase in question, and the candidate should be required to prorate the charge based on the proportion of the expense attributed to the "trip" made for campaign purposes compared to the total. For example, if the charge is for a tank of gas, the vehicle owner should be required to report the total miles traveled, and use campaign funds only for the charge multiplied by the ratio of campaign miles to total miles. (If a vehicle owner starts with a half tank, the "total miles" can be stated as the number of miles driven after the addition of fuel until the tank returns to the half-tank starting place.)

<u>R2-20-109(F): Independent expenditures</u>

Suggestion 1: In part (F)(6), I recommend not implementing the second change; that is, the Commission should decline to add the language "and comply with the requirements of A.R.S. § 16-913." My reasons are: <u>First</u>, saying that people must comply with requirements of a statute is unnecessary; everyone must comply with requirements of all statutes anyway. <u>Second</u>, the Commission has the ability to enforce compliance

with -913 but no power to change its "requirements"; although I do not believe that the proposed rule signaled that the Commission intended to change the "requirements" of -913, this language could be misconstrued as the Commission seeking to change (and extend) the "requirements" of -913 because paragraph (F)(6) refers to a class of people (those that do "not receive an exemption"). Third, the purpose of the referenced "exemption" is to relieve certain groups from filing CCEC/IE reports under the Act, specifically as required by -941(D) and -958(A)&(B); the "exemption" does not provide any relief from the requirements of -913, but if this language remains, the proposed rule could be misinterpreted to offer an exemption to -913.

Suggestion 2: I support the first change to this paragraph, which I understand is intended to maintain consistency with the definition of the exemption in part (F)(4). For parallel reasons, I recommend that the reference to 16-958 refer specifically to 16-958(A) and (B). There is no intention to relieve anyone from the provisions of other subsections of -958, to the extent they apply.

Suggestion 3: I support the concepts in new part (F)(12) but recommend that the Commission clarify the wording, and their purpose, by substituting the following:

> 12. Under A.R.S. § 16-942, the Commission has the obligation to decide whether to impose civil penalties for "a violation by or on behalf of any candidate of any reporting requirement imposed by this chapter," i.e., A.R.S. §§ 16-901 through -961. Some of the referenced "reporting requirements" are applicable to "political committees." According to A.R.S. § 16-901(19), as amended in April 2015 by H.R. 2649 (Ch. 297), a "political committee" is any of the persons specified in subsections (19)(a)-(e) or (g)-(h) or any "association or combination of persons" (referenced as a "Group" in this rule) that qualifies under subsection (19)(f) because it "meets both of the following requirements: (i) is organized, conducted or combined for the primary purpose of influencing the result of any election ...," and "(ii) knowingly received contributions or makes expenditures of more than five hundred dollars in connection with any election during a calendar year ...." The same statute lists types of elections, referenced as "Listed Elections" in this rule. Whenever, to impose any penalty for violation of any reporting requirement of Chapter 6, Title 16, the Commission is called upon to decide whether a Group

qualifies as a "political committee" under the definition in A.R.S. § 16-901(19)(f), the Commission shall apply the following:

a. The Commission shall consider a Group that is shown to be "organized" or "combined" for the primary purpose of influencing the results of any Listed Election as a "political committee," provided that it meets the requirement of A.R.S. § 16-901(19)(f)(ii), regardless of the Group's conduct at any time after its organization or combination.

b. Alternatively, the Commission shall consider a Group a "political committee," provided that it meets the requirement of A.R.S. § 16-901(19)(f)(ii), if the Group is "conducted" for the primary purpose of influencing the results of any Listed Election. In determining whether a Group is "conducted" for the primary purpose of influencing the results of any Listed Election, the Commission shall presume that a Group has been "conducted" for such primary purpose if (1) it has made expenditures as defined in A.R.S. § 16-901(8) during a calendar year of $500 or more, or (2) it has taken contributions as defined in A.R.S. § 16-901(5) during a calendar year of $500 or more.

c. For purposes of deciding whether a Group has received contributions or made expenditures of $500 in a calendar year, including for purposes of part (F)(12)(b) of this rule or A.R.S. § 16-901(19)(f)(ii):

(1) The Commission shall consider all expenditures and contributions made by the Group during that calendar year in connection with all Listed Elections collectively, as opposed to election-by-election.

(2) The Commission shall consider the Group to meet the $500 test from the date from the date the test is first met through December 31 of the calendar year in which the next legislative election occurs.

d. In determining for purposes of A.R.S. § 16-901(19)(f)(ii) whether a Group "knowingly" receives contributions or makes expenditures:

(1) The Commission shall presume that a Group knows of its own contributions and expenditures.

(2) If a Group transfers money or anything of value to a recipient that takes contributions as defined in A.R.S. § 16-901(5) or that makes expenditures as defined in A.R.S. § 16-901(8), the Commission shall presume that the Group knows that the transfer is an expenditure unless the Group has affirmatively restricted the transfer in a way that the recipient is prohibited from using the transfer for purposes of influencing any Listed Election, in which case

the Commission shall presume that the Group does not knows that the transfer of money is an expenditure.

e. A person appearing before the Commission may rebut a presumption established by this part (F)(12) by clear and convincing evidence.

The proposed alterations to this part (F)(12) are intended, notably, to (1) add helpful background to show the context in which the Commission will apply this rule, (2) to clarify that certain presumptions are rebuttable and state the standard for rebuttal, (3) to separate the test related to groups at formation from the test applicable to groups as they operate, (4) to treat all groups equally regardless of when they were formed or how old they were, (5) to add clarity to the distinction between contributions and expenditures and to cross-reference the definitions of those terms, and (6) to make the rule easier to read and understand.

R2-20-111: Books and records

Suggestion 1: The proposed amendments change "account" to "bank account." I understand the desire to clarify "account," but I view "bank" as too restrictive and suggest using the term "financial account." It is at least questionable whether credit unions, S&L's, and brokerage companies would be considered "banks," plus there are various "non-bank" financial institutions. All financial accounts, regardless of type of financial institution, though, should be equally covered by the rule.

R2-20-206(A): Recommendation on Complaints

Suggestion 1: I think it would improve clarity if part 1 changed the word "whether" to the word "that." Part 1 is intended to refer to a "reason-to-believe" finding, whereas part 2 refers to a "no-reason-to-believe" finding, so "whether" is no longer appropriate. The beginning of part 1 should read: "may recommend that the Commission find."

Suggestion 2: I suggest improving clarify of part 2 by dividing it at the "or" into two entries.

Suggestion 3: I suggest clarifying the reference to rule 205(A) in the divided part. This rule is not really "without regard to" 205(A), because it actually honors that rule.

Suggestion 4: I suggest clarifying what "otherwise" means and require the Commission to state a reason. For example, the reason may be that other election officials are investigating the matter. Whatever the "otherwise" reason, it should be placed on the record.

If suggestions 2-4 are taken, there would be a new part 3 inserted after modified part 2 saying: "may recommend that the Commission dismiss a complaint before respondent's letter or memorandum specified by A.A.C. R2-20-205(A) without a finding that there is or is not reason to believe, for a reason stated by the Commission."

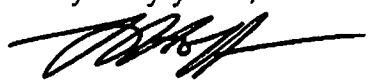
Suggestion 5: For further clarity, in proposed part 3 (which would be part 4 if the above recommendations are accepted), I recommend changing "without a reason to believe recommendation from the Executive Director" to "without making a

recommendation that the Commission find that there is or is not reason to believe." (Also, there should be a hyphen in "complaint-generated," to match the title and to make the provision easier to read.)

Suggestion 6: For still further clarity, in the same section, I recommend changing "and in such case shall notify the Commission" to a comma followed by "in which case the Executive Director shall notify the Commission."

If you have any questions, please feel free to give me a call.

Very truly yours,



Louis J. Hoffman

**Citizens Clean Elections Commission Report**

To: Commissioners
From: Thomas M. Collins, Executive Director
Subject: Proposed Rule Revisions

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The purpose of this report is to outline and provide responses to the public comment on the amendments circulated beginning after the May Commission meeting. Amendments to the following rules were circulated: A.A.C. R2-20-107, A.A.C. R2-20-109, A.A.C. R2-20-110 , A.A.C. R2-20-111, A.A.C. R2-20-113, A.A.C. R2-20-204, A.A.C. R2-20-205, A.A.C. R2-20-206, A.A.C. R2-20-402.01, A.A.C. R2-20-703, and A.A.C. R2-20-704. Pursuant to Commission rule R2-20-404 (B), the Commission opened a 60-day public comment period. The Commission received 132 comments almost all of which were focused on the proposed revision to A.A.C. R2-20-109. The vast majority of the comments were from individuals supportive of the rule proposal.

This memo is broken into two parts. The first part focuses on the legal basis for the objections of the Secretary of State's Election Director, which are largely the same as those of the Homebuilders' Association of Arizona, Americans for Prosperity, and the Arizona Chamber of Commerce, entities it represents, and the Center for Competitive Politics. The second part focuses on specific criticism of the rule amendments themselves. Additional supplemental analysis on former Commissioner Hoffman's substantive comments in favor of the 109 amendments

rule will follow next week as well as any staff-recommended line edits to the draft rules .[1] The purpose of this memo is to review the arguments against the proposal, which are principally policy arguments and legal objections to the rules themselves, rather than line-edit suggestions.

**I. Legal Claims and Responses**

The principal response from Secretary of State (SOS) revolves around two claims: 1) that the Clean Elections Act did not contemplate appropriate regulation of corporate and union political spending and 2) that the legislature passed laws in 2011 and 2014 limiting the jurisdiction of the Commission over such expenditures. Neither of these claims is correct. (Note: Secretary Reagan submitted a cover letter for Election Director Spencer's letter. This analysis addresses Director Spencer's letter).

**A. The Act and Commission rule expressly regulate political spending including corporate political spending.**

SOS claims that when the Act was passed "[t]here was no inkling that a non-profit corporation . . . could be subject to regulation as a political committee based on its activities." Spencer Letter at 4. Although SOS is correct to note that corporate independent expenditures were considered illegal in Arizona at the time the Act passed, *the Act's language is broader* than either corporations or political committees and requires all persons, regardless of entity form, to file reports. *See*

[1] Former Commissioner Hoffman is the only person who made comments on the other rules proposals.

A.R.S. § 16-941(D). Thus, for example, the Commission's 2004 rules stated that any "individual, corporation, political party or membership organization that makes independent expenditures cumulatively exceeding the amount prescribed in A.R.S. § 16-941(D) in an election cycle that expressly advocate the election or defeat of a specific candidate, as defined in A.A.C. R2-20-101(10), shall file campaign finance reports with the Secretary of State in accordance with A.R.S. § 16-958." A.A.C. R2-20-109(D)(1)(2004). Both the plain language of the Act passed by voters and the Commission's own rules recognized that corporations that participated in politics would have responsibilities to Clean Elections, even if those expenditures were otherwise illegal.[2]

**B. Neither the 2011 or the 2014 bills passed by the Legislature limited the Commission's enforcement of the Clean Elections Act and had they, those enactments would violate the Voter Protection Act.**

SOS claims that a 2011 amendment of A.R.S. 16-924, the statute authorizing SOS to refer matters to the Attorney General for enforcement, divested the Commission of jurisdiction over any persons other than publicly financed candidates. This claim is belied by the plain language of the amendment SOS cites. The language SOS identifies does only one thing: divests the Secretary of State of

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[2] SOS's reference to 2013 appears to relate to the Commission's briefing in the matter *Committee for Justice and Fairness v. Arizona Secretary of State* in which outside counsel for the Commission (Joe Kanefield) articulated these otherwise plain statutory principles in briefing before Maricopa Superior Court.

any jurisdiction over Article 2, of Chapter 6, of Title 16—the Clean Elections Act. Section 16-924 provides that "[u]nless another penalty is specifically prescribed in this title, if the filing officer for campaign finance reports designated pursuant to section 16-916, subsection A has reasonable cause to believe that a person is violating any provision of this title, *except for violations of chapter 6, article 2*, the secretary of state shall notify" the attorney general. (Emphasis added).[3] On its face this language means that those provisions that are in Article 2 (including,

[3] It is more plausible the legislature intended to divest the Secretary in view of the existing precedent which holds that the Commission enforces provisions of the Act including campaign contribution limits on non-participating candidates and independent expenditure reporting requirements regardless of the public financing portion of the program. *Clean Elections Institute v. Brewer*, 209 Ariz. 241, 245 ¶ 13, 99 P.3d 570, 574 (2004). Clarifying that those powers belong exclusively to the Commission is more likely to be consistent with the Voter Protection Act than limiting the Commission's enforcement of the Act it was created to enforce and administrate.

indisputably, 16-941(D)) are not in any way the jurisdiction of the Secretary.[4] Who would, after all, enforce the Clean Elections Act if not the commission?[5]

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[4] Indeed, the following session, the Legislature did repeal certain reports required by the Act as passed by voters, but left 16-941(D) and 16-942(B) entirely intact. *See* 2012 Ariz. Sess. Laws, Ch. 257, § 3 (50th Legislature, 2d Reg. Sess.). Whatever the effect of divesting the Secretary of jurisdiction over Article 2, the Legislature nevertheless chose not to repeal or amend these sections of the Act. Whether the provisions that have been repealed (which provided for more timely candidate reporting) were repealed consistent with the Voter Protection Act is beyond the scope of the issue before the Commission. It is unlikely removing those additional reports furthered the purpose of the Act.

[5] SOS, the Chamber, AFP and the Homebuilders assert that the Secretary is the state's chief election officer. However, "[t]he powers and duties of secretary of state . . . shall be as prescribed by law. Ariz. Const. Art. V, § 9. Accordingly, the legislature having divested the Secretary of authority over Article 2, that office's assertions here are entirely unjustified as a legal matter. To the extent the Secretary has any duties as chief state election officer they appear limited to voter registration activities, A.R.S. § 16-142(A) (providing that the Secretary is "[t]he chief state election officer who is responsible for coordination of state responsibilities under the national voter registration act . . . and under the uniformed and overseas citizens absentee voting act . . . .) and polling place accessibility. A.R.S. § 16-581(stating that "[i]f the board of supervisors determines that a polling place is inaccessible to elderly persons or persons with disabilities, it shall provide for alternative voting according to procedures established by the chief election officer of the state pursuant to the voting accessibility for the elderly and handicapped act.").

Section 41-121, which outlines the Secretary's duties, only requires that office to "[c]ertify to the governor the names of those persons who have received at any election the highest number of votes for any office, the incumbent of which is commissioned by the governor." *Id.* § 41-121(A)(6). That duty has nothing to do with campaign finance in general or Clean Elections specifically.

Similarly, the Legislature's 2014 addition of 16-905(O) says nothing about Article 2 at all, let alone independent expenditures. As the Maricopa Superior Court found in 2014 in reviewing this precise issue, "[t]he authority of the Citizens Clean Elections Commission (the "Commission") to investigate and impose penalties under the Citizens Clean Election Act ("CCEA") is not limited to candidates participating in public financing. The Commission has authority to investigate and impose penalties for violations of the CCEA by privately funded candidates in accordance with A.R.S. §§ 16-941(B), -942(B), -942(C), -956, and -957." *See* Final Judgment, *Horne v. Citizens Clean Elections Commission*, CV2014-009404 (Ariz. Superior Ct., October 31, 2014).

Finally, SOS claims that enforcement of Article 2 does not include enforcement of penalties on all reporting requirements. The plain language of the Act (consistent with the Maricopa County Superior Court's determination) again demonstrates SOS is in error. Section 16-942(B) provides that "[i]n addition to any other penalties imposed by law, the civil penalty for a violation by or on behalf of any candidate of *any reporting requirement imposed by this chapter* shall be one hundred dollars per day for candidates for the legislature and three hundred dollars per day for candidates for statewide office." (Emphasis added).[6]

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[6] The entirety of SOS's comments related to 16-941(B), which has nothing to do with independent expenditures, are irrelevant. *See* Spencer letter at 6. Suffice it to say that the Commission, the Arizona Supreme Court and the

## II. Criticism of the Rules and Responses

As above, this part principally focuses on SOS's comments, although the responses from the Chamber and the Homebuilders are also included.

**Issue 1: Inclusion of the phrase "participating or non-participating"**

**Argument:** "Unlawfully" expands the Commission's purview.

**Reality:** States what is self-evident under the Act, that candidates includes all candidates, participating or not.

**Issue 2: Objection to language stating that "An expenditure advocating against one or more candidates shall be considered an expenditure on behalf of any opposing candidates or candidates."**

**Argument:** "Unlawfully" expands commission reach.

**Response:** This rule merely codifies the Commission's interpretation of the 16-942(B) consistent with its plain language. SOS's citation to a recent ALJ recommendation to the contrary is unavailing as the Commission rejected precisely the construction Spencer now proffers because it leads to absurd results.

**Issue 3: Exemption of corporations and unions from Clean Elections reports and compliance with laws applicable to political spenders.**

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Maricopa County Superior Court have all rejected this false construction of the Act. Spencer's comments claiming that the Arizona Supreme Court only noted the Commission's powers as "dicta" are equally untrue, but even if that language were not expressly binding on Arizona courts (and the Commission itself) the Court's opinion demonstrates on its face that the Commission's interpretation of the Act is reasonable.

**Argument**: The Commission has no authority to regulate these expenditures and A.R.S. § 16-913 cannot apply to corporations and unions. Also made by Homebuilders.

**Response**: As SOS acknowledges, the exemption process has been in place since 2013. Numerous entities have successfully received exemptions, including entities now objecting. Corporate and union spending is only exempt from Clean Elections if it is done in compliance with A.R.S. 16-941(D), 16-920 and 16-914.02 which are an interlocking set of statutes on this subject. Furthermore, the Legislature expressly contemplated that corporations and unions would have to comply with A.R.S. § 16-913 when it provided that "*[a]ny entity* that makes an independent expenditure and that is organized primarily for the purpose of influencing an election and . . . that is a corporation, limited liability company or labor organization that accepts donations or contributions shall file with the filing officer *as a political committee as otherwise provided by law*. A.R.S. 16-914.02(K)(emphasis added). Nothing in the rule language proposes to convert corporations and unions to committees. Rather they must comply with A.R.S. § 16-913 in the event that the entities, are, in fact committees. The dichotomy Spencer establishes between committees on the one hand, and corporations and unions, on the other, does not exist in law. (Nevertheless, as former Commissioner Hoffman observes, because compliance with A.R.S. §§ 16-942(B) and 16-913 is

mandatory, this language adds little to the substance of the rule and I would recommend removing it).

**Issue 4: Audits of entities making independent expenditures**

**Argument**: The rule proposal expands the commission's audit authority "unlawful[ly]" forces entities to concede jurisdiction for audit. Also made by the Homebuilders.

**Response**: This proposal is a clarification. The 2013 rule providing that entities were subject to audit "pursuant to Article 4 of these rules" was intended to incorporate that process into this rule. The removal of that language simply clarifies that language was not a limitation. Nothing in the rule requires an entity to accept the Commission's jurisdiction and, indeed, the exemption form states that an exemption does not waive any defenses.

**Issue 5: Six month look-back to determine primary purpose of entity**

**Argument**: Unfairly looks at newly formed entities, unfairly emphasizes timing. Also made by the Chamber.

**Response**: The Commission signaled at its initial meeting that it would relax this presumption. Indeed, at this point I would recommend removing or altering the six month look-back. However, Spencer's criticism rings hollow as he has previously explained that "The assessment of an organization's primary purpose can be judged in terms of its fundraising, in terms of its expenditures, in

terms of the time its employees use on political matters. There are a number of criteria that need to be looked at to assess an organization's primary purpose." Finally, contrary to Spencer's assertions, the $500 threshold for becoming a political committee was set by the legislature not this rule. A.R.S. § 16-901(20)(F). Consequently, an entity that makes $500 in political expenditures is on notice it may be a committee if its primary purpose is to influence elections. Nothing in the rule alters this legislative pronouncement.

**Issue 6: Complaint about safe harbor for non-political donors**

**Argument**: The proposal "requires the disclosure of donors to a non-profit corporation even though such donors had no expectation of disclosure."

**Response**: This rule provides an easy mechanism for any donor to avoid inadvertent disclosure. Simply restrict the funds to non-political purposes. There is no additional filing required. The notion that donors to corporations that make both political and non-political expenditures have no idea their funds will be used for, or could be disclosed as, political activities, is absurd. The rule proposal simply reflects reality.

**III. Conclusion**

As noted above, vast majority of comments on the rules from individuals favor the adoption of the amendments to R2-20-109. The amendment is now eligible for final adoption. I will be consulting with our attorneys early next week

about the parameters for recirculation, should that be necessary, and will have a recommendation on recirculation in addition to some supplemental analysis and any line edits. Let me know if you have questions.

**Citizens Clean Elections Commission Report**

To: Commissioners
From: Thomas M. Collins, Executive Director
Subject: Rule Revisions, former Commissioner Hoffman comments, next steps

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The purpose of this brief memo is to make recommendations regarding former Commissioner Hoffman's comments and next steps procedurally.

Hoffman Comments on R2-20-2-109

Former Commissioner Hoffman's drafting points on R2-20-109 are constructive. I agree, for example, that removing the citation to A.R.S. § 16-913 in R2-20-109(F)(6) is helpful. *See* Hoffman Letter at 8. Likewise, his revision of proposed (F)(12) is comprehensive and provides a "decision tree" that is easier to navigate than the draft. Additionally, former Commissioner Hoffman discards the six-month look-back for determining primary purpose and relaxes the draft's presumptions on certain electoral conduct and financial transactions. These suggestions are consistent with the Commission's discussion at its May meeting. Thus, rather than reinvent the wheel, I am attaching a word document with the Hoffman suggestions for your consideration and any additional changes you may want to make.

Next Steps

As noted in my prior memo, the rule amendments are now eligible to be adopted under the Clean Elections Act. Some opponents have called for them to be recirculated. Given that adopting Commissioner Hoffman's suggestions actually addresses criticism and otherwise leaves the rule proposal's essence intact, I do not believe such a recirculation is necessary. Additionally, it is clear that opponents of the rule have little to offer as a matter of improving the rule, as their principle arguments focus on a question not before the Commission—whether to enforce the Clean Elections Act. Nevertheless, the Commission could, in its discretion, recirculate by posting on our website through the next meeting. I would suggest that this solicitation of comment request feedback on the rules themselves and how the "primary purpose" of entities should be analyzed. More comments repeating incorrect arguments about the Act are not a particularly effective use of time.

Please, let me know if you have questions.

To: Clean Elections Commissioners and Executive Director

From: Louis J. Hoffman and Timothy J. Reckart

Re: Clean Elections Commission rules on penalties for independent expenditure groups

Date: October 26, 2015 (for October 29, 2015 Commission meeting)

Gentlemen:

We write jointly as former commissioners concerned about Clean Elections and the processes of the Commission. We are the two most recent past-chairs of the Commission (Hoffman in 2013 and Reckart in 2014) and each of us completed full terms as commissioners. We come from opposite political parties and different counties (Hoffman, Maricopa County Democrat, and Reckart, Pima County Republican). We wish to provide information and opinions in a non-partisan and focused way, which we hope the current Commission finds useful.

First, and most importantly, we think that it is crucial that the Commission avoid partisan squabbling or in-fighting and maintain focus on the intention of the citizens of Arizona who passed the Clean Elections Act and on the wording of the law. The Commission has long avoided being politicized or having its judgment called into serious question for favoring or opposing certain political parties, politicians, or interest groups. That tradition should be preserved. We urge the Commission to rise above the clamor and heat surrounding this issue and work together cooperatively towards a solid solution.

Second, both of us agree that there is *no doubt* that the Commission possesses the authority to evaluate whether to apply the penalties stated in A.R.S. § 16-942(B) to independent expenditure groups who violate reporting requirements of Title 16, Chapter 6, Article 1. A three-page table (attached as Exhibit A) quotes the specific language of the 942(B) statute, highlights four specific clauses that demand that conclusion, and places the statute in context of other Clean Elections Act statutes. The Commission is the *only official or body* with authority to impose these penalties, and it should not shirk its duty in this regard.

We have reviewed carefully arguments to the contrary provided by Eric Spencer, the State Elections Director, and noted that others, particularly the Chamber of Commerce, have found Mr. Spencer's analysis "meticulous." It is not. Mr. Spencer cannot "explain away" the clear language of the statute cited in our Exhibit A. For the most part his arguments fail to mention the statute at all, and when they do, he brushes them aside without confronting the key phrases. In addition, we wish to remind the Commission that the Secretary of State's office has no business opining on the meaning of statutes that the SOS does not enforce.

This is an issue of special concern to both of us because, during our time on the Commission, we litigated – and defeated in court – many of the same arguments being made now. Then-AG Tom Horne challenged the Commission's right to penalize him, as a non-participating candidate, under the 942 statute, claiming that it applied only to participating candidates. The court rejected Mr. Horne's argument "that the Commission's authority to investigate and impose penalties under the CCEA is

limited to participating candidates." Similar arguments are being made now. Whether the arguments are made by non-participating candidates or by IE groups doesn't matter; the Commission has authority to impose penalties specified in the 942 statute as written in that statute, and the Commission should not deviate from that position.

Third, several comments have indicated that, even if the Commission has authority, it should not exercise that authority as a matter of public policy. Mr. Horne likewise alleged, with support from the Chamber, "logistical and practical problems of concurrent jurisdiction, such as subjecting a candidate to investigations by multiple entities," but the court held that such factors should not override the statute.

In our opinion, the Commission should not create, in effect, a blanket waiver saying that the voter-approved penalties will never be applied to a class of violations. The Commission, and only the Commission, can impose the penalties in 942(B), and it should do so when appropriate. The voters of Arizona set up a regime of *concurrent jurisdiction*, which is not uncommon or unprecedented. The will of the voters should be respected.

The SOS and AG (who enforce Article 1 directly) do not have the power to impose the heightened penalties in the 942(B) statute. In addition, those officers are political actors, whereas the Commission is non-partisan. The Commission has greater pre-litigation investigatory powers, including subpoena. The Commission can act faster and investigate timely, including during the course of election season. For example, the SOS's pursuit of Mr. Horne took longer than Mr. Horne's four-year term, while the Commission's pursuit of Mr. Horne took only a few months.

The Commission can avoid conflict with SOS investigations by other means, including via general cooperation and by enacting rules proposed previously (see below). It would be appropriate for the Commission to extend its rules, or establish by policy, means for ensuring that investigations of IE committees will be instituted and pursued only in appropriate cases, as was done, during our times, for investigations of non-participating candidates. The Commission is not obligated to pursue cases when the SOS and AG processes will suffice. Conversely, allowing the Commission room to pursue cases where existing procedures will not suffice remains sensible.

Another important policy consideration is that, in many instances, the Commission will be investigating an IE based on a complaint about an omitted Article 2 reporting obligation simultaneously. In a common class of instances, an IE group will register *neither* as a "political committee" *nor* as a corporation (or LLC or labor union) under A.R.S. § 16-914.02. Entities who register under either Article 1 path are less likely to be accused of violations.[1] The Clean Elections Act (Article 2) requires "*any person* who makes independent expenditures related to a particular office cumulatively exceeding five hundred dollars in an election cycle," with certain exceptions, to file Clean Elections IE reports under A.R.S. § 16-941(D). Given the breadth of this Clean Election Act provision, anyone alleging a violation of an Article 1 reporting obligation is also likely to allege a violation of an Article 2 reporting obligation as well. The

[1] Note that, if a group files either type of registration, it will be less likely to violate the Act, because the Commission treats political committee campaign finance reports as Commission IE reports and allows corporations reporting under 914.02 to file for exemptions from Commission IE reporting, per rule R2-20-109(F).

reporting requirements and reporting times of the Clean Elections reports under 941(D) are different from the requirements and times for "political committees." But if the Commission is going to investigate whether there was a failure to report under A.R.S. § 16-941(D), in many cases it will make sense to consider, at the same time, whether to impose the penalty under A.R.S. § 16-942(B) for violation of *any* reporting requirement.

For the above multitude of reasons, sound public policy supports allowing the Commission room to investigate violation of "any reporting requirement imposed by this chapter," just as the statute demands. There is no policy reason to refrain from a class of enforcement.

Fourth, if the Commission proceeds, as it should, then we recommend that it take three actions:

A. The Commission should deny the SOS petition seeking to exempt from Commission penalties all violations of A.R.S. § 16-913. Again, the Clean Elections Act demands application of the penalty provision of 942(B) to "any reporting requirement imposed *by this chapter*," which includes A.R.S. § 16-913.

B. The Commission should publish for public comment the changes to Rule R2-20-206 proposed by one of us (Hoffman) in August, attached as Exhibit B, which seek to establish procedures to minimize conflict with the SOS or other investigatory agencies.[2]

C. The Commission should enact a rule containing guidance for how the Commission will choose to interpret the new statute defining "political committee." While one of us (Reckart) was chair, parts of the regulated community requested the Commission's help in clarifying the statute so it could be understood in practice by those regulated, as the SOS had offered "no standards." Although a Commission rule may not be able to cover all scenarios that might arise, some guidance by rule makes eminent sense and is in the public interest.

As for the details of the rule, we recommend that the Commission work cooperatively in the forthcoming session to address comments made by the public concerning revisions to the previously published draft. (See our first point above.) The Commission has both the power and the duty to amend the draft rule published for comment in light of public comments received to date.

We generally support the proposal made by Mr. Langhofer and published for comment by the Commission, with the edits proposed by Mr. Collins in Exhibit 2 to his October 16th memo with two exceptions discussed below. Mr. Collins is a member of the public and has the right to comment himself, and the Commission can adopt reasonable changes within the scope of the published proposal in response to public comment, including his.

We agree with Mr. Collins that the Commission should not adopt Rule I of the Langhofer published proposal, seeking to assign to the Commission a "burden." The Commission is the decisionmaker, not a party to a contested matter. We think that it makes sense to transfer the proposed "preponderance of evidence" standard to Rule II of the Langhofer published proposal.

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[2] Mr. Reckart does not adopt Mr. Hoffman's prior comments in all respects but supports his Exhibit B proposal.

We agree with Mr. Collins that the Commission should not adopt the first sentence of Rule IV of the Langhofer published proposal, proposing to constrain the Commission as to what it may compel an entity to identify. The Commission has subpoena power by statute (A.R.S. § 16-956(B)), and the Commission can vote on whether to exercise that power on a case-by-case basis.

We recommend that the Commission also not adopt the second sentence of Rule IV of the Langhofer published proposal, proposing to constrain what the Commission may disclose. Mr. Collins suggests a rewritten version, which we urge the Commission not to adopt either. The Commission's obligation to disclose data is subject to other law, including the Public Records Act, and the Commission is obligated to act in accordance with such requirements and cannot change its obligations by rule. Procedures associated with the Public Records Act address the subject of confidentiality of private records and seem sufficient. Finally, in view of the accusations that the Commission would violate the law by adopting language not earlier published for opposition, we recommend avoiding any argument simply by deleting Langhofer Part IV entirely rather than by substituting Mr. Collins' sentence.

The changes to Parts II and III of the Langhofer published proposal contained in Exhibit 2 to Mr. Collins' memo consist of simply minor form edits and should be adopted, except one of Mr. Collins' clarifications does not go far enough. We support Mr. Collins' proposal to insert a reference to 16 A.R.S. § 16-901(20) ("Section 20") in Langhofer Part II. That recently amended statute says that a "political committee" can be any of the persons or entities defined in parts (a)-(h) of Section 20. Mr. Langhofer's proposal deals only with part (f). The Commission is entitled to consider an entity a "political committee" if it meets any branch of Section 20 *other than* part (f).

But we suggest an even more specific clarification, to avoid a remaining inconsistency with the statute. Under part (f), the statute says that "an association or combination of persons" that meets the $500 threshold in part (f)(ii) can qualify as a "political committee" if it "is *organized, conducted* <u>*or*</u> *combined* for the primary purpose of influencing the result of any election" of the types listed in Section 20. Mr. Langhofer's proposal, which addresses activity of an entity in a two-year election cycle, refers only to how the entity's business is *conducted*. How much the entity contributes to another entity or spends in a given cycle says nothing about how that entity is "organized ... or combined." According to the statute, the Commission can consider an above-$500 entity a "political committee" if there is evidence that it is "*organized ... or combined* for the primary purpose of influencing the result of any [covered] election."

For that reason, we recommend the following clarifying wording for the first line of Mr. Langhofer's proposal: "An entity shall not be found to be a political committee <u>under 16 A.R.S. § 16-901(20)(f) *as being conducted for the primary purpose of influencing an election* unless a preponderance of the evidence establishes that</u> ...." The italicized underlined language represents our further clarification, and the non-italicized underlined language derives from Mr. Collins' clarification.

We thank you for the opportunity to comment.

# Exhibit A

| Statutory language | Why it applies to Art. 1 violation by IE committees | Related statutes |
|---|---|---|
| **16-942. Civil penalties and forfeiture of office.** | Title does not refer to Clean Elections participating candidates only | Contrast with "16-947. Certification as a participating candidate" |
| **B. In addition to any other penalties imposed by law,** | Intention was to strengthen penalties of Art. 1 (see below). | Petition (which voters signed to get CEAct on ballot) says the Act would "tighten campaign-law enforcement." |
| **the civil penalty for a violation by or on behalf of** | The phrase "or on behalf of" cannot mean just participating candidate campaign committees, otherwise "by" would be sufficient. What does "on behalf of" refer to if not IE groups? | Meshes with 16-947(D): "any person who makes independent expenditures related to a particular office ..., shall file reports ... identifying the office and the candidate or group of candidates whose election or defeat is being advocated and stating whether the person is advocating election or advocating defeat."<br><br>See also 16-948: A. A participating candidate shall conduct all financial activity through a single campaign account of the candidate's campaign committee. |
| **any candidate** | Any candidate; not just participating ones. | Contrasts with parts A and D of same statute: "A. The civil penalty for a violation of any contribution or expenditure limit in section 16-941 by or on behalf of a participating candidate shall be ...."; "D. Any participating candidate adjudged to have committed a knowing violation of ...." |
| **of any reporting requirement imposed by this chapter** | This chapter, not just this article. See attached page – includes reporting requirements of article 1. What could "this chapter" possibly mean if Commission has no jurisdiction over Art. 1 and the SOS has exclusive jurisdiction over Art. 1? | Showing that drafters knew the difference, see: 16-946(C): referring to "... campaign finance reports filed under article 1 of this chapter." See also 16-947(B), 16-948(C). |

| Statutory language | Why it applies to Art. 1 violation by IE committees | Related statutes |
|---|---|---|
| shall be one hundred dollars per day for candidates for the legislature and three hundred dollars per day for candidates for statewide office. | One of the CEAct's purposes was to impose higher penalties. | Compare with the weaker penalties of 16-918(B), (C) ($10 per business day up to $450 total (capped), increasing to $25/day at 15 days after receiving a notice of delinquency). |
| The penalty imposed by this subsection shall be doubled if the amount not reported for a particular election cycle exceeds ten percent of the adjusted primary or general election spending limit. No penalty imposed pursuant to this subsection shall exceed twice the amount of expenditures or contributions not reported. | The referenced "spending limits" are fixed dollar amounts, set differently for different races, and has positive meaning even if all candidate in a race are non-participating ones. The limit can be "adjusted" if a participating candidate exists, in a dominant party primary, and chooses to move funds from the general to the primary. | 16-961:<br>G. "Primary election spending limits" means: 1. For a candidate for the legislature, twelve thousand nine hundred twenty-one dollars....<br>H. "General election spending limits" means amounts fifty per cent greater than the amounts specified in subsection G of this section.<br>I.2. "Adjusted" spending limit means an original spending limit as further adjusted pursuant to section 16-952.<br>16-952: "[A] participating candidate for the legislature in a one-party-dominant legislative district who is qualified for clean elections funding for the party primary election of the dominant party may choose to reallocate a portion of funds from the general election period to the primary election period."<br><br>See also Horne decision CV2014-009404: "the Court finds that the [plain meaning of the CEAct] demonstrates an intent to subject nonparticipating candidates who substantially exceed the statutory contribution limits to the same penalty as participating candidates." |

| Statutory language | Why it applies to Art. 1 violation by IE committees | Related statutes |
|---|---|---|
| The candidate and the candidate's campaign account shall be jointly and severally responsible for any penalty imposed pursuant to this subsection. | If a candidate is penalized, both the candidate and the campaign account are responsible. Does not apply to IE expenditures that are truly independent. | -- |
| **Who imposes this penalty?** | The Commission, and only the Commission, has the duty to impose this penalty. If the Commission does not do so, the statute would contain a penalty that no one enforces. | 16-956(A)(7). "The commission shall: ... Enforce this article, ... monitor reports filed pursuant to this chapter"<br><br>16-924(A): "Unless another penalty is specifically prescribed in this title, if the filing officer for campaign finance reports designated pursuant to section 16-916, subsection A has reasonable cause to believe that a person is violating any provision of this title, <u>except for violations of chapter 6, article 2</u>, the secretary of state shall notify the attorney general for a violation regarding a statewide office or the legislature, ...." |
| **Who interprets the meaning of this section?** | The Commission has the duty to interpret this section, and so do the Courts.<br><br>The SOS has no jurisdiction over this section and should not be opining on what it means. | 16-956: C. The commission may adopt rules to carry out the purposes of this article and to govern procedures of the commission. |

# Exhibit B

**R2-20-206. Executive Director's recommendation on complaint-generated matters**

**A.** Following either the expiration of the 5 day period specified by A.A.C. R2-20-205 or the receipt of a response as specified by A.A.C. R2-20-205(A), whichever occurs first, the Executive Director:

1. may recommend to the Commission ~~whether~~ *that* it should find reason to believe that a respondent has committed or is about to commit a violation of a statute or rule over which the Commission has jurisdiction;

2. may recommend that the Commission find that there is no reason to believe that a violation of a statute or rule over which the Commission has jurisdiction has been committed or is about to be committed;

*3. may recommend*~~, or~~ that the Commission otherwise dismiss a complaint ~~without regard to the provisions of~~ *before respondent's letter or memorandum specified by* A.A.C. R2-20-205(A) *without a finding that there is or is not reason to believe, for a reason stated by the Commission*; or

*4*~~3~~. may close the complaint-generated matter without *making a recommendation that the Commission find that there is or is not* reason to believe ~~recommendation from the Executive Director~~ based upon Respondent complying with the statute or rule on which the complaint is founded, ~~and~~ *in* ~~such~~ *which case the Executive Director* shall notify the Commission.

**B.** Neither the complainant nor the respondent has the right to appeal the Executive Director's recommendation made pursuant to subsection (A) because the recommendation is not an appealable agency action.

**C.** If the complaint relates to a violation of A.R.S. § 16-941(B) by a non-participating candidate or that candidate's campaign committee, the Executive Director shall not proceed pursuant to R2-20-206(A) or R2-20-207(A), without first receiving Commission approval to initiate an inquiry.

*D. If the complaint relates to a violation of A.R.S. § 16-941(D) by a person that would require, to find a violation, that the Commission make a finding that the person is a "campaign committee," the Executive Director shall not proceed pursuant to R2-20-206(A) or R2-20-207(A) without first inquiring of the Secretary of State whether the Secretary of State has made a determination of whether the person is a "campaign committee." If the Secretary of State has made a determination that the person is not a "campaign committee," the Executive Director shall not proceed pursuant to R2-20-206(A) or R2-20-207(A), without first receiving Commission approval to initiate an inquiry. If the Secretary of State has made a determination that the person is a "campaign committee" and has initiated or recommended an ongoing enforcement action, the Executive Director shall consult with the*

*Secretary of State, and if necessary the Attorney General, whether a potential Commission inquiry would interfere with such planned or ongoing enforcement action, and if the Executive Director proceeds pursuant to R2-20-206(A)(1) or R2-20-207(A), the Executive Director shall advise the Commission about the opinions of, and facts learned from, the consultation.*

E~~D~~. The respondent shall not have the right to appeal the Commission's decision to authorize an inquiry pursuant to subsection (C) because the Commission's decision whether or not to authorize an inquiry is not an appealable agency action. *The respondent may not use the Commission or the Executive Director's actions or non-actions in compliance with, or in violation of subsection (D) as a defense to Commission enforcement action, because subsection (D) comprises only certain internal processes intended to reduce the possibility of conflict with other state entities, and does not form a grant of any substantive rights on which respondents have the right to rely.*

**Arizona Administration Code, Title 2, Chapter 20**

## 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. **"Act"** means the Citizens Clean Elections Act set forth in the Arizona Revised Statutes, Title 16, Chapter 6, Article 2.
2. **"Audit"** means a written report pertaining to an examination of a candidate's campaign finances that is reviewed by the Commission in accordance with A.A.C. Title 2, Chapter 20, Article 4.
3. **"Campaign account"** means an account designated by a political committee that is used solely for political campaign purposes as required in A.R.S. § 16-902(C).
4. **"Candidate"** means natural person who receives or gives consent for receipt of a contribution for the person's nomination for or election to any office in this state, and includes the person's campaign committee, the political committee designated and authorized by the person, or any agents or personnel of the person. When not otherwise specified by statute or these rules, "Candidate" includes a Candidate for Statewide Office or a Legislative Candidate.
5. **"Candidate for Statewide Office"** means:
   A natural person seeking the office of governor, attorney general, secretary of state, treasurer, superintendent of public instruction, or mine inspector
6. **"Current campaign account"** means a campaign account used solely for election campaign purposes in the present election cycle.
7. **"Direct campaign purpose"** includes, but is not limited to, materials, communications, transportation, supplies and expenses used toward the election of a candidate. This does not include the candidate's personal appearance, support, or support of a candidate's family member.
8. **"Early contributions"** means private contributions that are permitted pursuant to A.R.S. § 16-945.
9. **"Examination**" means an inspection by the Commission or agent of the Commission of a candidate's books, records, accounts, receipts, disbursements, debts and obligations, bank account records, and campaign finance reports related to the candidate's campaign, which may include fieldwork, or a visit to the campaign headquarters, to ensure compliance with campaign finance laws and rules.
10. **"Executive Director"** means the highest ranking Commission staff member, who is appointed pursuant to A.R.S. § 16-955(J) and is responsible for directing the day-to-day operations of the Commission.
11. **"Expressly advocates**" means:
    a. Conveying a communication containing a phrase such as "vote for," "elect," "re-elect," "support," "endorse," "cast your ballot for," "(name of candidate) in (year)," "(name of candidate) for (office)," "vote against," "defeat," "reject," or a campaign slogan or words that in context can have no reasonable meaning other than to advocate the election or defeat of one or more clearly identified candidates.
    b. Making a general public communication, such as in broadcast medium, newspaper, magazine, billboard, or direct mailer referring to one or more clearly identified candidates and targeted to the electorate of that candidate(s)–that in context can have no reasonable meaning other than to advocate the election or defeat of the candidate(s), as evidenced by factors such as the presentation of the candidate(s) in

a favorable or unfavorable light, the targeting, placement, or timing of the communication, or the inclusion of statements of the candidate(s) or opponents.

c. A communication within the scope of subsection (10)(b) shall not be considered as one that "expressly advocates" merely because it presents information about the voting record or position on a campaign issue of three or more candidates, so long as it is not made in coordination with a candidate, political party, agent of the candidate or party, or a person who is coordinating with a candidate or candidate's agent.

12. **"Extension of credit"** means the delivery of goods or services or the promise to deliver goods or services to a candidate in exchange for a promise from the candidate to pay for such goods or services at a later date.
13. **"Family member"** means parent, grandparent, spouse, child, or sibling of the candidate or a parent or spouse of any of those persons.
14. **"Fair market value"** means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts.
15. **"Fixed Asset"** means tangible property usable in a capacity that will benefit the candidate for a period of more than one year from the date of acquisition.
16. **"Fund"** means the Citizens Clean Elections Fund established pursuant to A.R.S. §16-949(D).
17. **"Future campaign account"** means a campaign account that is used solely for campaign election purposes in an election that does not include the present or prior primary or general elections.
18. **"Independent candidate"** means a candidate who is registered as an independent or with no party preference or who is registered with a political party that is not eligible for recognition on the ballot.
19. **"Legislative candidate"** means:
    A natural person seeking the office of state senator or state representative.
20. **"Officeholder"** means a person who has been elected to a statewide office or the legislature in the most recent election, as certified by the Secretary of State, or who is appointed to or otherwise fills a vacancy in such office.
21. **"Person,"** unless stated otherwise, or having context requiring otherwise, means:
    A corporation, company, partnership, firm, association or society, as well as a natural person.
22. **"Prior campaign account"** means a campaign account used solely for campaign election purposes in a prior election.
23. **"Public funds"** includes all funds deposited into the Citizens Clean Elections Fund and all funds disbursed by the Commission to a participating candidate.
24. **"Solicitor"** means a person who is eligible to be registered to vote in this state and seeks qualifying contributions from qualified electors of this state.
25. **"Unopposed"** means:
    With reference to state senate candidates and statewide candidates other than corporation commission, that the candidate is opposed by no candidates who will appear on the ballot. In reference to candidates for the House of Representatives and corporation commission, "unopposed" means that no more candidates will appear on the ballot than the number of seats available for the office.
    a. For purposes of funding pursuant to A.R.S. § 16-951, "unopposed means that the candidate is unopposed for both the primary election and the general election.
    b. For purposes of equal funding allocations pursuant to A.R.S. § 16-952(A), "unopposed" means that the candidate is unopposed in the party primary.

c. For purposes of equal funding allocations pursuant to A.R.S. § 16-952(B), "unopposed" means that the candidate is unopposed in the general election.

**R2-20-103. Communications: Time and Method**

**A.** General rule: in computing any period of time prescribed or allowed by the Act or these rules, unless otherwise specified, days are calculated by calendar days, and the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday. The term "legal holiday" includes New Year's Day, Martin Luther King Jr. Day, President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday for employees of the state.

**B.** Special rule for periods less than seven days: when the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

**C.** Whenever the Commission or any person has the right or is required to do some act within a prescribed period after the service of any paper by or upon the Commission by regular mail, three calendar days shall be added to the prescribed period.

**D.** Whenever the Commission or any person is required to do some act within a prescribed period after the service of paper by or upon the Commission by overnight delivery, the time period shall begin on the date the recipient signs for the overnight delivery.

**E.** The Commission shall use the address of the candidate that is provided on the application for certification filed pursuant to A.R.S. § 16-947. A candidate may designate in writing for the Commission to send written correspondence to a person other than the candidate.

**F.** If possible, the Commission shall furnish a copy of all communications electronically.

**G.** Delivery of subpoenas, orders and notifications to a natural person may be made by handing a copy to the person, or leaving a copy at his or her office with the person in charge thereof, by leaving a copy at his or her dwelling place or usual place of abode with a person of suitable age and discretion residing therein, by mailing a copy by overnight delivery to his or her last known address, or by any other method whereby actual notice is given.

**H.** When the person to be served is not an individual, delivery of subpoenas, orders and notifications may be made by mailing a copy by overnight delivery to the person at its place of business or by handing a copy to a registered agent for service, or to any officer, director, or agent in charge of any office of such person, or by mailing a copy by overnight delivery to such representative at his or her last known address, or by any other method whereby actual notice is given.

**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, but later chooses to run as a participating candidate, shall:

1. Make the change to participating candidate status during the exploratory and qualifying periods only;
2. Return the amount of each contribution in excess of the individual contribution limit for participating candidates;
3. Return all Political Action Committee (PAC) monies received;
4. Not have spent contributions exceeding the early contribution limit, or any part of a contribution exceeding the early contribution limit;
5. Comply with all provisions of A.R.S. § 16-941 and Commission rules.

**B.** Money from prior election. If a nonparticipating candidate has a cash balance remaining in the campaign account from the prior election cycle, the candidate may seek certification as a participating candidate in the current election after:

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);
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(8); and the event or item purchased is completed or otherwise used and depleted prior to April 30 of an election year;
3. Remitting the money to the Fund;
4. Disposing of the money in accordance with A.R.S. § 16-915.01; or
5. Holding the money in the prior election campaign account, not to be used during the current election, except as provided pursuant to this Section.

**C.** Application for certification as a participating candidate. Pursuant to A.R.S. § 16-947, a candidate seeking certification shall file with the Secretary of State a Commission-approved application and a campaign finance report reflecting all campaign activity to date, in accordance with A.R.S. § 16-915. In the application, a candidate shall certify under oath that the candidate:

1. Agrees to use all Clean Elections funding for direct campaign purposes only;
2. Has filed a campaign finance report, showing all campaign activity to date in the current election cycle;
3. Will comply with all requirements of the Act and Commission rules;
4. Is subject to all enforcement actions by the Commission as authorized by the Act and Commission rules;
5. Has the burden of proving that expenditures made by or on behalf of the candidate are for direct campaign purposes;
6. Will keep and furnish to the Commission all documentation relating to expenditures, receipts, funding, books, records (including bank records for all accounts), and supporting documentation and other information that the Commission may request;
7. Will permit an audit or examination by the Commission of all receipts and expenditures including those made by the candidate. The candidate shall also provide any material required in connection with an audit, investigation, or examination conducted by the Commission. The candidate shall facilitate the audit by making available in one central location, such as the Commission's office space, records and such personnel as are necessary to conduct the audit or examination, and shall pay any amounts required to be repaid;
8. Will submit the name and mailing address of the person who is entitled to receive primary and general election funding on behalf of the candidate and the name and address of the campaign depository designated by the candidate. Changes in the information required by this subsection shall not be effective until submitted to the Commission in a letter signed or submitted electronically, by the candidate or the committee treasurer;
9. Will pay any civil penalties included in a conciliation agreement or otherwise imposed against the candidate;
10. Will timely file all campaign finance reports with the Secretary of State in an electronic format; and

11. Will file an amended application for certification reporting any change in the information prescribed in the application for certification within five days after the change.

**D.** If certified as a participating candidate, the candidate shall:

1. Only accept early contributions from individuals during the exploratory and qualifying periods in accordance with A.R.S. § 16-945. No contributions may be accepted from political action committees, political parties or corporations;
2. Not accept any private contributions, other than early contributions and a limited number of $5 qualifying contributions;
3. Make expenditures of personal monies of no more than the amounts prescribed in A.R.S. § 16-941(A)(2) for legislative candidates and for statewide office candidates;
4. Conduct all campaign activity through a single campaign account. A participating candidate shall only deposit early contributions, qualifying contributions and Clean Elections funds into the candidate's current campaign account. The campaign account shall not be used for any non-direct campaign purpose as provided in Article 7 of these rules;
5. Attend a Commission sponsored candidate training class within 60 days of being certified or within 60 days of the beginning of the qualifying period if the candidate is certified before the beginning of the qualifying period. If the candidate is unable to attend a training class, the candidate shall:
   a. Notify the Commission that the candidate is unable to attend a training class. The Commission then will send that person the Commission training materials; and
   b. The candidate shall sign and send to the Commission a statement certifying that he or she has received and reviewed the Commission training materials; and
6. Limit campaign expenditures. Prior to qualifying for Clean Elections funding, a candidate shall not incur debt, or make an expenditure in excess of the amount of cash on hand. Upon approval for funding by the Secretary of State, a candidate may incur debt, or make expenditures, not to exceed the sum of the cash on hand and the applicable spending limit.

**E.** Personal loans. A participating candidate may loan his or her campaign committee personal monies during the exploratory and qualifying periods only. The total sum of personal funds and loans shall not exceed the personal monies expenditure limits set forth in A.R.S. § 16-941(A)(2). If the loan is to be repaid, the loans shall be repaid promptly upon receipt of Clean Elections funds if the participating candidate qualifies for Clean Elections funding. Loans from a bank, or other institution listed in A.R.S. § 16-901(5)(b)(vii) to a candidate shall be considered personal monies and shall not exceed the personal monies expenditure limits set forth in A.R.S. § 16-941(A)(2).

**F.** A participating candidate may raise early contributions for election to one office and choose to run for election to another office.

**G.** Contributions to officeholder expense accounts are subject to the restrictions of A.R.S. § 41-1234.01, contributions prohibited during session; exceptions.

**R2-20-105. Certification for Funding**

**A.** After a candidate is certified as a participating candidate, pursuant to A.R.S. § 16-947, in accordance with the procedure set forth in R2-20-104, that candidate may collect qualifying contributions only during the qualifying period.

**B.** A participating candidate must submit to the Secretary of State, a list of names of persons who made qualifying contributions, an application for funding prescribed by

the Secretary of State, the minimum number of original reporting slips, and an amount equal to the sum of the qualifying contributions collected pursuant to A.R.S. § 16-950 no later than one week after the end of the qualifying period. Any and all expenses associated with obtaining the qualifying contributions, including credit card processing fees must be paid for from the candidate's early contributions or personal monies. A candidate may develop his or her own three-part reporting slip for qualifying contributions, or one that is photocopied or computer reproduced, if the form substantially complies with the form prescribed by the Commission[1]. The candidate must comply with the Act and ensure that the original qualifying slip is tendered to the Secretary of State, a copy remains with the candidate, and that a copy is given to the contributor.

**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 debit card. A non-refundable transaction fee may be assessed on electronic $5 qualifying contribution transactions. The transaction fee is not a contribution to the candidate's campaign and is paid by the contributor. If excess funds are accumulated by the candidate's campaign based on the transaction fee then all excess funds must be given to the Commission and must be entered into the candidate's campaign finance report as interest/dividend/other income in accordance with A.R.S. 16-915(3)(e).

**D.** A solicitor who seeks signatures and qualifying contributions on behalf of a participating candidate shall provide his or her residential address, typed or printed name and signature on each reporting slip. The solicitor shall also sign a sworn statement on the contribution slip avowing that the contributor signed the slip, that the contributor contributed the $5, that based on information and belief, the contributor's name and address are correctly stated and that each contributor is a qualified elector of this state. Nothing in this rule shall prohibit the use of direct mail or the Internet to obtain qualifying contributions as long as an original signature is provided on the qualifying contribution form. The candidate may sign the qualifying contribution form as the solicitor and is accountable for all of the responsibilities of a solicitor. For qualifying contributions received in accordance with subsection C of this section, the residential address and signature of the solicitor is not required.

**E.** The Secretary of State has the authority to approve or deny a candidate for Clean Elections funding, pursuant to A.R.S. § 16-950(C) based upon the verification of the qualifying contribution forms by the appropriate county recorder. The county recorder shall disqualify any qualifying contribution forms that are:

1. Unsigned by the contributor;
2. Undated; or
3. That the recorder is unable to verify as matching signature of a person who is registered to vote, on the date specified inside the electoral district the candidate is seeking.

**F**. The Secretary of State will notify the candidate and the Commission regarding the approval or denial of Clean Elections funds. A candidate who is denied Clean Elections funding after all of the slips are verified is eligible to submit supplemental qualifying

[1] A.R.S. § 39-103(A) requires public forms to conform to standard letter size of eight and one-half by eleven inches

contribution forms for one additional opportunity to be approved for funding pursuant to subsection (G) of this rule.

**G.** The amount equal to the sum of the qualifying contributions collected and tendered to the Secretary of State pursuant to A.R.S. § 16-950(B) will be deposited into the fund, and the amount tendered will not be returned to a candidate if a candidate is denied Clean Elections funding.

**H.** In accordance with the procedure set forth at A.R.S. § 16-950(C), if the Secretary of State determines that the result of the five percent random sample is less than 110 percent of the slips needed to qualify for funding, then the Secretary of State shall send all of the slips for verification. If the county recorder has verified all of the candidate's signature slips and there is an insufficient number of valid qualifying contribution slips to qualify the candidate for funding, the candidate may make only one supplemental filing of additional qualifying contribution slips and qualifying contributions to the Secretary of State if all of the following apply:

1. The candidate files at least the minimum number of additional slips needed to qualify for funding;
2. The slips are not receipts for duplicate contributions from individuals who have previously contributed to that candidate; and
3. The period for filing qualifying contributions slips has not expired.

**I.** The Secretary of State shall forward facsimiles of all of the supplemental qualifying contribution slips to the appropriate county recorders for the county of the contributors' addresses as shown on the contribution slips. The county recorder shall verify all of the supplemental slips within 10 business days after receipt of the facsimiles and shall provide a report to the Secretary of State identifying as disqualified any slips that are unsigned by the contributor or undated or that the recorder is unable to verify as matching the signature of a person who is registered to vote, on the date specified on the slip, inside the electoral district of the office the candidate is seeking. On receipt of the report of the county recorder on all supplemental slips, the Secretary of State shall calculate the candidate's total number of valid qualifying contribution slips and shall approve or deny the candidate for funds.

**J.** Pursuant to A.R.S. § 16-956(F), the minimum number of qualifying contributions shall be as follows:

| | |
|---|---|
| Legislature | 250 |
| Mine Inspector | 650 |
| Corporation Commissioner | 1,700 |
| Superintendent of Public Instruction | 1,700 |
| Treasurer | 1,700 |
| Attorney General | 2,800 |
| Secretary of State | 2,800 |
| Governor | 4,500 |

**R2-20-106. Distribution of Funds to Certified Candidates**

**A.** Before the initial disbursement of funds, the Commission shall review the candidate's funding application and all relevant facts and circumstances and:

1. Verify that the number of signatures on the candidate's nominating petitions equals or exceeds the number required pursuant to A.R.S. § 16-322 as follows:
   a. If the application is submitted before the March 1 voter registration list is determined, the Commission shall verify that the number of signatures on the candidate's nominating petitions equals or exceeds 115 percent of the number

required pursuant to A.R.S. § 16-322 based on the prior election voter registration list as determined by the Secretary of State; or

b. If the application is submitted after the current year March 1 voter registration list is determined the Commission shall verify that the number of signatures on the candidate's nominating petitions is equal to or greater than the number required pursuant to A.R.S. § 16-322.

2. Determine that the required number of qualifying contributions have been received and paid to the Secretary of State for deposit in the Fund; and
3. Determine whether the candidate is opposed in the election.

**B.** In making the determinations described in subsection (A)(3), the Commission shall consider all relevant facts and circumstances, and it shall not be bound by election formalities such as the filing of nominating petitions by others in determining whether an applicant is opposed. Among other evidence the Commission may consider is the existence of exploratory committees or filings made to organize campaign committees of opponents and other like indicia.

**C.** The Commission may review and affirm or change its determination that the candidate is or is not opposed until the ballot for the election is established.

**D.** Within seven days after a primary election and before the Secretary of State completes the canvass, the Commission shall disburse funds for general election campaigns to the participating candidates who received the greatest number of votes at each primary election, provided that the candidate with the highest number of votes out of the total number of votes, has at least two percentage points greater than the candidate with the next highest votes based on the unofficial results as of that date. In a legislative race for the Arizona House of Representatives, the Commission shall disburse funds for general election campaigns to participating candidates with the highest or second highest number of votes cast, provided such candidate received votes totaling at least two percentage points, of the total ballots cast, larger than the vote total cast for the candidate with the third highest vote total.

**E.** Promptly after the Secretary of State completes the canvass, the Commission shall disburse funds for general election campaigns to all eligible participating candidates to whom payment has not been made. If a participating candidate has received funds from the Commission pursuant to subsection (D) and the canvass or recount determines that the candidate is not eligible to appear on the general election ballot, the participating candidate shall return all unused funds to the Fund within 10 days after such determination is made. That candidate shall make no from general election funds from the date of the canvass.

**F.** The Commission may refuse to distribute funds to participating candidates in cases in which the Commission finds evidence of fraud or illegal activity committed by the participating candidate.

**G.** Pursuant to A.R.S. § 16-953(A), a participating candidate shall return to the Fund all of his or her primary election funds not committed to expenditures (1) during the primary election period; and (2) for goods or services directed to the primary election. A candidate shall not be deemed to have violated A.R.S. § 16-953(A) or this subsection on account of failure to use all materials purchased with primary election funds prior to the primary election, provided such candidate exercises good faith and diligent efforts to comply with the requirement that goods and services purchased with primary election funds be directed to the primary election. Subject to A.R.S. § 16-953(A) and this subsection, a candidate may continue to use goods purchased with primary election funds during the general election period.

**R2-20-107. Candidate Debates**

**A**. The Commission shall sponsor debates among statewide and legislative office candidates prior to the primary and general elections. Except as set forth in subsection (D) below, the Commission shall not be required to sponsor a debate if there is no participating candidate in the election for a particular office.

**B**. In the primary election period, the Commission shall sponsor political party primary election debates for every office in which:

1. There are at least two candidates of the political party's nomination, and
2. At least one of the candidates is a participating candidate.

**C**. The following candidates will not be invited to participate in debates as follows:

1. In the primary election, write-in candidates for the primary election, independent candidates, no party affiliation or unrecognized party candidates.
2. In the general election, write-in candidates.

**D**. In the event that there is no participating candidate in a primary or general election but there is an election involving candidates subject to invitation pursuant to this rule, the following apply:

1. Primary Election. In the event that there is no participating candidate in a primary election, but the election includes two candidates who are subject to invitation pursuant this rule, a candidate subject to invitation may request that the Commission sponsor a debate pursuant to this rule. If the requesting candidate is the sole participant in the debate the format shall be as prescribed in R2-20-107(K).
2. General Election. In the event that there is no participating candidate in a general election, but the election includes two candidates who are subject to invitation pursuant to this rule, a candidate subject to invitation may request that the Commission sponsor a debate pursuant to this rule. If the requesting candidate is the sole participant in the debate the format shall be as prescribed in R2-20-107(K).
3. A nonparticipating candidate who requests a debate pursuant to this rule shall complete and return the invitation form sent to the candidate by the Commission by the deadline identified on the form. Forms received by the Commission past the deadline may still be considered at the discretion of the Commission. Commission staff shall notify all invited candidates if a debate will be sponsored by the Commission and which candidates will participate.
4. If a candidate requests that the Commission sponsor a debate and fails or refuses to attend the debate, or a candidate agrees to participate in a debate and subsequently fails or refuses to attend the debate sponsored by the Commission, each candidate who fails or refuses to attend the debate shall reimburse the Commission for the cost of debate preparations not to exceed $10,000 for a non-participating candidate for the legislature and $25,000 for a non-participating candidate for statewide office. In the event that a candidate requests a general election debate or agrees to participate in a general election debate but does not advance to the general election, the candidate shall not be liable for the reimbursement.

**E**. Pursuant to A.R.S. § 16-956(A)(2), all participating candidates certified pursuant to A.R.S. § 16-947 shall attend and participate in the debates sponsored by the Commission. No proxies or representatives are permitted to participate for any candidate and no statements may be read on behalf of an absent candidate.

**F**. Unless exempted, if a participating candidate fails to participate in any Commission-sponsored debate, the participating candidate shall be fined $500.00. For purposes of this Section, each primary or general election shall be considered a separate election.

**G**. A participating candidate may request to be exempt from participating in a required debate by doing the following:

1. Submit a written request to the Commission at least one week prior to the scheduled debate, and
2. State the reasons and circumstances justifying the request for exemption.

**H**. After examining the request to be exempt, the Commission will exempt a candidate from participating in a debate if at least three Commissioners determine that the circumstances are:
1. Beyond the control of the candidate;
2. Of such nature that a reasonable person would find the failure to attend justifiable or excusable; or
3. Good cause, as defined in A.R.S. § 16-918(E).

**I**. A participating candidate who fails to participate in a required debate may submit a request for excused absence to the Commission.
1. The candidate's request for excused absence shall:
   a. State the reason the candidate failed to participate in the debate, and
   b. State the reason the candidate failed to request an exemption in advance, and
   c. Be submitted to the Commission no later than five business days after the date of the debate the candidate failed to attend.
2. After examining the request for excused absence, the Commission may excuse a candidate from the penalties imposed if at least three Commissioners determine that the circumstances were:
   a. Beyond the control of the candidate;
   b. Of such nature that a reasonable person would find the failure to attend justifiable or excusable; or
   c. Good cause, as defined in A.R.S. § 16-918(E).

**J**. When a participating candidate is not opposed in the general election, the candidate shall be exempt from participating in a Commission-sponsored debate for the general election.

**K**. In the event that a participating candidate is opposed in the primary election or general election but is the only candidate taking part in a primary election period or general election period debate, as applicable, the debate will be held and will consist of a 30-minute question and answer session for the single participating candidate. If more than one candidate takes part in the debate, regardless of participation status, the debate will be held in accordance with the procedures established by the Commission staff.

**R2-20-108. Termination of Participating Candidate Status**

**A.** A candidate may voluntarily terminate his or her participating candidate status at any time prior to notification by the Commission that such candidate has qualified for Clean Elections funding. To withdraw from participating candidate status, a candidate shall send a letter to the Commission stating the candidate's intent to withdraw and the reason for the withdrawal. The candidate shall not accept any private monies until the withdrawal is approved by the Commission. The Commission shall act on the withdrawal request within seven days. If the Commission takes no action in the seven-day time period, the withdrawal is automatic.

**B.** A candidate's participating candidate status shall automatically terminate if (1) the candidate fails to make such submissions to the Secretary of State as prescribed in A.A.C. R2-20-105(B) within seven days after the end of the qualifying period; or (2) the candidate is denied Clean Elections funding by the Secretary of State and the candidate is ineligible to make a supplemental filing with the Secretary of State in accordance with A.A.C. R2-20-105(G).

**C.** A candidate whose participating candidate status has been terminated in accordance with this Section shall be ineligible to receive Clean Elections funding for that election cycle unless he/she reapplies for certification and is in compliance with R2-20-104(A) and R2-20-104(C).

**D.** In the event that a candidate who has collected qualifying contributions decides not to seek certification as a participating candidate, the candidate shall return all qualifying contributions received from contributors who have not given written permission to use their qualify contributions as campaign contributions. Written permission may include a check box on the original $5 form that authorizes a candidate to treat the qualifying contribution as a general campaign contribution if he or she decides not to participate in the Clean Elections system. If a good faith attempt to return the funds to the contributor is unsuccessful, the contributions shall be submitted to the Fund.

**R2-20-109. 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 expressly provided otherwise by another Commission rule.

**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 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. 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. Traditional candidates may reimburse in a similar fashion, but are not required to stay within the State mileage rate.

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.** 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 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 making an independent expenditure on behalf of a candidate 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). Penalties imposed pursuant to this subsection shall not exceed twice the amount of expenditures not reported. 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 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.
4. Any corporation, limited liability company, or labor organization that is both (a) not registered as apolitical 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. § 16-958.
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 and 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 any exempt entity pursuant to Article 4 of these rules.
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.
10. Neither a form filed seeking an exemption pursuant to this subsection (F) nor a Clean Elections Act independent expenditure report filed as specified by A.R.S. § 16-9958 constitutes an admission that the filer is or should be considered a political committee. The grant of an exemption pursuant to this subsection (F) does not constitute a finding or determination that the filer is or should be considered a political committee.
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.

**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 limit~~s~~ 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).

**R2-20-110. Campaign Accounts**

**A.** During an election cycle, each participating and nonparticipating candidate shall conduct all campaign financial activities through a single, current election campaign account and any petty cash accounts as are permitted by law.

**B.** A candidate may maintain a campaign account other than the campaign account described in subsection (A) if the other campaign 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 election cycle if the funds are deposited in the account for that prior campaign. A candidate shall not deposit debt-retirement contributions into current campaign accounts.

**R2-20-111. 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 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 issuing a subpoena pursuant to A.R.S. § 16-956(B) for the production of any books, papers, records, or other items sought in the public inspection request. The subpoena shall order the candidate to produce:

a. All papers, records, or other items sought in the public inspection request;
b. No later than two business days after the date of the subpoena; and
c. To the Commission's office during regular business hours.

5. Any person who believes that a candidate or a candidate's campaign committee has not complied with this Section may appeal to Superior Court.

**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 the names, party affiliations and offices sought by the candidates; photographs of the candidates; and general information regarding the date of the primary or general election and 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.
7. The exception set forth in this Subsection (A) shall not apply to costs incurred with respect to a display of the listing of candidates made on telecommunications systems, billboards, or in newspapers, magazines or similar types of general circulation advertising.

**B.** This Section is intended to establish, for purposes of the Act and Commission rules, circumstances under which the payment by a political party of certain costs described herein shall be excluded from the definition of contribution pursuant to A.R.S. § 16-901(5)(b)(v) or from the definition of expenditures pursuant to A.R.S. § 16-901(8)(c), as applicable. Nothing in this Section shall be construed to prohibit a political party from making any expenditure or contribution not otherwise prohibited by Arizona law.

**C.** The Commission shall treat as an expenditure of de minimis value the payment by a political party of the costs of (1) preparation and display on the political party's website of a slate card, sample ballot or other printed listing of three or more candidates for any public office for which an election is held; or (2) preparation and

distribution via email, to recipients who have subscribed to receive email from the political party and whose email addresses are not rented, purchased or otherwise obtained from a third-party source, of a slate card, sample ballot or other printed listing of three or more candidates for any public office for which an election is held. A political party that pays the costs of preparation, display and/or distribution of a slate card, sample ballot or other printed listing of three or more candidates, as described in this subsection, and which is otherwise required to file a campaign finance report in accordance with A.R.S. § 16-913, shall disclose such payment as an expenditure with a value of zero dollars.

**R2-20-113. Candidate Statement Pamphlet**

**A.** The Commission shall publish a candidate statement pamphlet in both the primary and general elections as required by A.R.S. §16-956(A)(1). Commission staff shall send invitations for submission of a 200 word statement to every statewide and legislative candidate who has qualified for the ballot.

**B.** The following candidates will not be invited to submit a statement for the candidate statement pamphlet:

1. In the primary election: write-in candidates for the primary election, independent candidates, no party affiliation or unrecognized party candidates.
2. In the general election: write in candidates

## Article 2. Compliance and Enforcement Procedures

### R2-20-201. Scope

These rules provide procedures for processing possible violations of the Citizens Clean Elections Act.

### R2-20-202. Initiation of compliance matters

Compliance matters may be initiated by a complaint or on the basis of information ascertained by the Commission in the normal course of carrying out its statutory responsibilities.

### R2-20-203. Complaints

**A.** Any person who believes that a violation of any statute or rule over which the Commission has jurisdiction has occurred or is about to occur may file a complaint in writing to the Executive Director.

**B.** A complaint shall conform to the following:

1. Provide the full name and address of the complainant; and
2. Contents of the complaint shall be sworn to and signed in the presence of a notary public and shall be notarized.

**C.** All statements made in a complaint are subject to the statutes governing perjury. The complaint shall differentiate between statements based upon personal knowledge and statements based upon information and belief.

**D.** The complaint shall conform to the following provisions:

1. Clearly identify as a respondent each person or entity who is alleged to have committed a violation;
2. Statements which are not based upon personal knowledge shall be accompanied by an identification of the source of information which gives rise to the complainant's belief in the truth of such statements;
3. Contain a clear and concise recitation of the facts which describe a violation of a statute or rule over which the Commission has jurisdiction; and
4. Be accompanied by any documentation supporting the facts alleged if such documentation is known of, or available to, the complainant.

### R2-20-204. Initial complaint processing; notification

**A.** Upon receipt of a complaint, the Executive Director shall review the complaint for substantial compliance with the technical requirements of A.A.C. R2-20-203, and, if it complies with those requirements, shall within 5 days after receipt of the complaint notify each respondent that the complaint has been filed, advise each respondent of Commission compliance procedures, and provide each respondent a copy of the complaint.

**B.** If a complaint does not comply with the requirements of A.A.C. R2-20-203, the Executive Director shall so notify the complainant and any person or entity identified therein as respondent, within the 5 day period specified in subsection A, that no action should be taken on the basis of that complaint. A copy of the complaint shall be provided with the notification to each respondent.

### R2-20-205. Opportunity for no action on complaint-generated matters

**A.** A respondent shall be afforded an opportunity to demonstrate that no action should be taken on the basis of a complaint by submitting, within 5 days from receipt of a

written copy of the complaint, a letter or memorandum setting forth reasons why the Commission should take no action.

**B.** The Commission shall not take any action, or make any finding, against a respondent other than action dismissing the complaint, unless it has considered such response or unless no such response has been served upon the Commission within the 5 day period specified in subsection A.

**C.** The respondent's response shall be sworn to and signed in the presence of a notary public and shall be notarized. The respondent's failure to respond in accordance with subsection A within 5 days of receiving the written copy of the complaint may be viewed as an admission to the allegations made in the complaint for purposes of the reason to believe finding pursuant to A.A.C. R2-20-206.

**R2-20-206. Executive Director's recommendation on complaint-generated matters**

**A.** Following either the expiration of the 5 day period specified by A.A.C. R2-20-205 or the receipt of a response as specified by A.A.C. R2-20-205(A), whichever occurs first, the Executive Director:

1. may recommend to the Commission whether it should find reason to believe that a respondent has committed or is about to commit a violation of a statute or rule over which the Commission has jurisdiction;
2. may recommend that the Commission find that there is no reason to believe that a violation of a statute or rule over which the Commission has jurisdiction has been committed or is about to be committed, or that the Commission otherwise dismiss a complaint without regard to the provisions of A.A.C. R2-20-205(A); or,
3. may close the complaint generated matter without a reason to believe recommendation from the Executive Director based upon Respondent complying with the statute or rule on which the complaint is founded and in such case shall notify the Commission.

**B.** Neither the complainant nor the respondent has the right to appeal the Executive Director's recommendation made pursuant to subsection (A) because the recommendation is not an appealable agency action.

**C.** If the complaint relates to a violation of A.R.S. § 16-941(B) by a non-participating candidate or that candidate's campaign committee, the Executive Director shall not proceed pursuant to R2-20-206 (A) or R2-20-207(A), without first receiving Commission approval to initiate an inquiry.

**D.** The respondent shall not have the right to appeal the Commission's decision to authorize an inquiry pursuant to subsection (C) because the Commission's decision whether or not to authorize an inquiry is not an appealable agency action.

**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 Executive Director may recommend 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 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.

**R2-20-208. Complaint processing; notification**

**A.** If the Commission, either after reviewing a complaint-generated recommendation as described in A.A.C. R2-20-206 and any response of a respondent submitted pursuant to A.A.C. R2-20-205, or after reviewing an internally generated recommendation as described in A.A.C. R2-20-207, determines by an affirmative vote of at least 3 of its members that it has reason to believe a respondent has violated a statute or rule over which the Commission has jurisdiction, the Commission shall notify such respondent of the Commission's finding, setting forth the sections of the statute or rule alleged to have been violated and the alleged factual basis supporting the finding. In accordance with A.R.S. § 16-957(A), the Commission shall serve on the respondent an order requiring compliance within 14 days. During that period, the respondent may provide any explanation to the Commission, comply with the order, or enter into a public administrative settlement with the Commission.

**B.** If the Commission finds no reason to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred, or otherwise terminates its proceedings, the Executive Director shall so notify both the complainant and respondent.

**C.** The complainant may bring an action in Superior Court in accordance with A.R.S. § 16-957(C) if the Commission finds there is no reason to believe a violation of a statute or rule over which the Commission has jurisdiction has occurred, or otherwise terminates its proceedings.

**R2-20-209. Investigation**

**A.** The Commission shall conduct an investigation in any case in which 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.

**B.** The Commission's investigation may include, but is not limited to, field investigations, audits, and other methods of information gathering.

**R2-20-210. Written questions under order**

The Commission may issue an order requiring any person to submit sworn, written answers to written questions, and may specify a date by which such written answers must be submitted to the Commission.

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

**A.** The Commission may authorize its 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 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.

**R2-20-212. Reserved**

**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 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.

**R2-20-214. The probable cause to believe recommendation; briefing procedures**

**A.** Upon completion of the investigation conducted pursuant to A.A.C. R2-20-209, the Executive Director shall prepare a brief setting forth his or her position on the factual and legal issues of the case and containing a recommendation on whether the Commission should find probable cause to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred or is about to occur.

**B.** The Executive Director shall notify each respondent of the recommendation and enclose a copy of his or her brief.

**C.** Within 5 days from receipt of the Executive Director's brief, the respondent may file a brief with the Commission setting forth the respondent's position on the factual and legal issues of the case.

**D.** After reviewing the respondent's brief, the Executive Director shall promptly advise the Commission in writing whether he or she intends to proceed with the recommendation or to withdraw the recommendation from Commission consideration.

**R2-20-215. Probable Cause to Believe Finding**

**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.

**R2-20-216. Conciliation**

**A.** Upon a Commission finding of probable cause to believe that the respondent has violated a statute or rule over which the Commission has jurisdiction, the Executive Director shall attempt to settle the matter as authorized by A.R.S. § 16-957(A) by informal methods of administrative settlement or conciliation, and shall attempt to reach a tentative conciliation agreement with the respondent.

**B.** A conciliation agreement pursuant to subsection A of this section is not binding upon either party unless and until it is signed by the respondent and by the Executive

Director upon approval by the affirmative vote of at least 3 members of the Commission.

**C.** If a conciliation agreement is reached between the Commission and the respondent, the Executive Director shall send a copy of the signed agreement to both complainant and respondent.

**R2-20-217. Enforcement proceedings**

**A.** Upon a finding of probable cause that the alleged violator remains out of compliance, the Executive Director may recommend to the Commission that the Commission authorize the issuance of an order and assess civil penalties pursuant to A.R.S. § 16-957(B).

**B.** The Commission may, by an affirmative vote of at least 3 of its members, authorize the Executive Director to issue an order and assess civil penalties pursuant to A.R.S. § 16-957(B).

**C.** Subsections A and B of this rule shall not preclude the Commission, upon request of a respondent, from entering into a conciliation agreement pursuant to A.A.C. R2-20-216 even after the Commission authorizes the Executive Director to issue an order and assess civil penalties pursuant to subsection B of this rule. Any conciliation agreement reached under this subsection is subject to the provisions of A.A.C. R2-20-216(B) and shall have the same force and effect as a conciliation agreement reached under A.A.C. R2-20-216(D).

**R2-20-218. Reserved**

**R2-20-219. Reserved**

**R2-20-220. Ex parte communications**

**A.** In order to avoid the possibility of prejudice, real or apparent, to the public interest in enforcement actions pending before the Commission pursuant to its compliance procedures, except to the extent required for the disposition of ex parte matters as required by law (for example, during the normal course of an investigation or a conciliation effort), no interested person outside the agency shall make or cause to be made to any Commissioner or any member of the Commission's staff any ex parte communication relative to the factual or legal merits of any enforcement action, nor shall any Commissioner or member of the Commission's staff make or entertain any such ex parte communications.

**B.** This rule shall apply from the time a complaint is filed with the Commission or from the time that the Commission determines on the basis of information ascertained in the normal course of its statutory responsibilities that it has reason to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred or may occur, and remains in force until the Commission has finally concluded all action with respect to the matter in question.

**C.** Nothing in this section shall be construed to prohibit contact between a respondent or respondent's attorney and any attorney or the Executive Director or the Assistant Attorney General in the course of representing the Commission or the respondent with respect to an enforcement proceeding or civil action. No statement made by a Commission attorney or staff member shall bind or stop the Commission.

**R2-20-221. Representation by counsel; notification**

**A.** If a respondent wishes to be represented by counsel with regard to any matter pending before the Commission, respondent shall so advise the Commission by sending a letter of representation signed by the respondent stating the following:

1. The name, address, and telephone number of the counsel; and
2. A statement authorizing such counsel to receive any and all notifications and other communications from the Commission on behalf of respondent.

**B.** Upon receipt of a letter of representation, the Commission shall have no contact with respondent except through the designated counsel unless authorized in writing by respondent. The Commission will send a copy of this letter to the respondent's attorney.

**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 $1,000 for a participating candidate for the legislature and $5,000 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 $1,000.

**R2-20-223. Notice of appealable agency action**

If the Commission makes a probable cause finding pursuant to A.A.C. R2-20-215 or decides to initiate an enforcement proceeding pursuant to A.A.C. R2-20-217, the Assistant Attorney General (AAG) 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:

**A.** The statute or rule violated and specific facts constituting the violation;

**B.** A description of the respondent's right to request a hearing and to request an informal settlement conference; and

**C.** A description of what the respondent may do if the respondent wishes to remedy the situation without appealing the Commission's decision.

**R2-20-224. Request for an administrative hearing**

**A.** The respondent must file a request for a hearing with the Commission within 30 days of receipt of the notice prescribed in A.A.C. R2-20-223.

**B.** If the respondent requests a hearing, the AAG shall notify the Office of Administrative Hearings (OAH) of the appeal and shall coordinate a hearing date with the Commission's AAG and Commission staff that may be called as witnesses and OAH. The hearing must be held within 60 days after the notice of appeal is filed with the Commission.

**C.** The AAG shall prepare and serve a notice of hearing on all parties to the appeal at least 30 days before the hearing date, unless an expedited hearing is requested and granted. The notice of hearing shall be drafted in accordance with A.R.S. § 41-1092.05(D).

**R2-20-225. Informal settlement conference**

**A.** If the respondent requests an informal settlement conference, the informal settlement conference shall be held within 15 days after the Commission receives the request. A request for an informal settlement conference shall be in writing and must be filed with the Commission no later than 20 days before the hearing date. A person with the authority to act on behalf of the Commission must represent the Commission at the conference. The AAG shall attend the settlement conference, but shall not be the individual authorized to act on behalf of the Commission.

**B.** The Commission representative shall notify the respondent in writing that the statements, either written or oral, made by the appellant at the conference, including a written document, created or expressed solely for the purpose of settlement negotiations, are inadmissible in any subsequent administrative hearing. The parties participating in the settlement conference waive their right to object to the participation of the agency representative in the final administrative decision.

**R2-20-226. Administrative hearing**

**A.** If the matter continues to a hearing, the hearing shall be held in accordance with A.R.S. § 41-1092.07. The Administrative Law Judge (ALJ) must issue a written recommended decision within 20 days after the hearing is concluded.

**B.** If the enforcement action occurs within 6 months of the primary or general election, the Commission will request an expedited review of the matter.

**R2-20-227. Review of administrative decision by Commission**

**A.** Within 30 days after the date OAH sends a copy of the ALJ's decision to the Commission, the Commission may review the ALJ's decision and accept, reject or modify the decision.

**B.** If the Commission declines to review the ALJ's decision, the Commission shall serve a copy of the decision on all parties. If the Commission modifies or rejects the decision, the Commission shall file with OAH and serve on all parties a copy of the ALJ's decision with the rejection or modification and a written justification setting forth the reasons for the rejection or modification. If the Commission accepts, rejects or modifies the decision, the Commission's decision will be certified as final.

**C.** If the Commission does not accept, reject or modify the decision within 30 days after OAH sends the ALJ's decision to the Commission, the ALJ's decision will be certified as final.

**R2-20-228. Judicial review**

A party to the administrative proceeding may appeal a final administrative decision pursuant to A.R.S. § 12-901 et. seq. (Judicial Review of Administrative Decisions). A party does not have the right to judicial review unless that party first exhausts its administrative remedies by going through the above steps. After a hearing has been held and a final administrative decision has been entered pursuant to A.R.S. § 41-1092.08, a party is not required to file a motion for rehearing or review of the decision in order to exhaust the party's administrative remedies.

## Article 3. Standard of Conduct for Commissioners and Employees

### R2-20-301. Purpose and applicability

**A.** The Commission is committed to implementing the Act in an honest, independent and impartial fashion and to seeking to uphold public confidence in the integrity of the electoral system. To ensure public trust in the fairness and integrity of the Arizona elections process, all Commissioners and employees must observe the highest standards of conduct. This Article prescribes standards of ethical conduct for Commissioners and employees of the Commission relating to conflicts of interest arising from outside employment, private businesses, professional activities, political activities, and financial interests. The avoidance of misconduct and conflicts of interest on the part of the Commissioners and the employees through informed judgment is indispensable to the maintenance of these prescribed ethical standards. Attainment of these goals necessitates strict and absolute fairness and impartiality in the administration of the law.

**B.** This Article applies to all persons included within the terms "employee" and "Commissioner" of the Commission.

**C.** These Standards of Conduct shall be construed in accordance with any applicable laws, regulations and agreements between the Commission and a labor organization.

**D.** Pursuant to A.R.S. § 16-955(I), for three years after a Commissioner completes his or her tenure, Commissioners shall not seek or hold any public office, serve as an officer of any political committee, or employ or be employed as a lobbyist.

### R2-20-302. Definitions

1. **"Commission"** means the Citizens Clean Elections Commission of Arizona.
2. "**Commissioner"** means a voting member of the Commission, appointed pursuant to A.R.S. § 16-955.
3. **"Conflict of interest"** means a situation in which a Commissioner's or an employee's private interest is or appears to be inconsistent with the efficient and impartial conduct of his or her official duties and responsibilities.
4. **"Employee"** means an employee or staff member of the Commission.
5. **"Former employee"** means one who was, and is no longer, an employee of the Commission.
6. **"Official responsibility"** means the direct administrative or operating authority, whether intermediate or final, to approve, disapprove, or otherwise direct Commission action. Official responsibility may be exercised alone or with others and either personally or through subordinates.
7. **"Outside employment"** or **"outside activity"** means any work, service or other activity performed by a Commissioner or employee other than in the performance of the Commissioner's or employee's official employment duties. It includes such activities as writing and editing, publishing, teaching, lecturing, consulting, self-employment, and other services or work performed, with or without compensation.
8. **"Person"** means an individual, corporation, company, association, firm, partnership, society, joint stock company, political committee, or other group, organization, or institution.

### R2-20-303. Notification to Commissioners and Employees

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 shall consult with the Commission's Chair or Executive Director. The Commission's Chair or Executive Director shall be consulted prior to the undertaking of any action that might violate this Article governing the conduct of Commissioners or employees.

**R2-20-305. Reporting suspected violations**

**A.** Commissioners and employees who have information, which causes them to believe that there has been a violation of a statute or a rule set forth in this Article, shall report promptly, in writing, such incident to the Commission's Chair or Executive Director.

**B.** When information available to the Commission 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 an opportunity to explain the conflict or appearance of conflict in writing.

**R2-20-306. Disciplinary and other remedial action**

**A.** A violation of this Article by an employee may be cause for disciplinary action, which may be in addition to any penalty prescribed 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 rule 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.

**R2-20-307. General prohibited conduct**

**A.** A Commissioner or employee shall avoid any action whether or not specifically prohibited by this rule that might result in, or create the appearance of:

1. Using public office for unlawful private gain;
2. Giving favorable or unfavorable treatment to any person or organization due to any partisan or political consideration;
3. Impeding Commission efficiency or economy;
4. Losing impartiality;
5. Making a Commission decision without Commission approval; or

6. Adversely affecting the confidence of the public in the integrity of the Commission.

**B.** A Commissioner or employee of the Commission shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value, from a person who:

1. Has, or is seeking to obtain, contractual or other business or financial relations with the Commission;
2. Conducts operations or activities that are regulated or examined by the Commission; or
3. Has an interest that may be substantially affected by the performance or nonperformance of the Commissioner or employee's official duty.

**C.** Subsection B of this rule shall not apply:

1. When circumstances make it clear that obvious family or personal relationships, rather than the business of the persons concerned, are the motivating factors;
2. To the acceptance of food, refreshments, and accompanying entertainment of nominal value in the ordinary course of a social occasion or a luncheon or dinner meeting or other function where a Commissioner or an employee is properly in attendance;
3. To the acceptance of unsolicited advertising or promotional material or other items of nominal value such as pens, pencils, note pads, calendars; and
4. To the acceptance of loans from banks or other financial institutions on customary terms to finance proper and usual activities, such as home mortgage loans.

**D.** A Commissioner or an employee shall not solicit a contribution from another employee for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift from an employee receiving less pay than himself or herself. However, this subsection does not prohibit a voluntary gift of nominal value or donation in a nominal amount made on a special occasion such as birthday, holiday, marriage, illness, or retirement.

**E.** This rule does not preclude a Commissioner or employee from receipt of reimbursement, unless prohibited by law, for expenses of travel and such other necessary subsistence as is compatible with this Article for which no state payment or reimbursement is made. However, this rule does not allow a Commissioner or employee to be reimbursed, or payment to be made on his or her behalf, for excessive personal living expenses, gifts, entertainment, or other personal benefits, nor does it allow a Commissioner or employee to be reimbursed by a person for travel on official business under Commission orders when reimbursement is prescribed by statute.

**R2-20-308. Outside employment or activities**

**A.** A Commissioner or employee shall not engage in outside employment that is incompatible with the full discharge of his or her duties as a Commissioner or employee.

**B.** Incompatible outside employment or other activities by Commissioners or employees include, but are not limited to:

1. Outside employment or other activities that involve illegal activities;
2. Outside employment or other activities that would give rise to a real or apparent conflict of interest situation even though no violation of a specific statutory provision was involved;

3. Acceptance of a fee, compensation, gift, payment of expense, or any other thing of monetary value in circumstances where acceptance may result in, or create the appearance of, a conflict of interest;
4. Outside employment or other activities that might bring discredit upon the state or Commission;
5. Outside employment or other activities that establish relationships or property interests that may result in a conflict between the Commissioner's or the employee's private interests and official duties;
6. Outside employment or other activities which would involve any contractor or subcontractor connected with any work performed for the Commission or would involve any person or organization in a position to gain advantage in its dealings with the state through the Commissioner's or employee's exercise of his or her official duties;
7. Outside employment or other activities that may be construed by the public to be the official acts of the Commission. In any permissible outside employment, care shall be taken to ensure that names and titles of Commissioners and employees are not used to give the impression that the activity is officially endorsed or approved by the Commission or is part of the Commission's activities;
8. Outside employment or other activities which would involve use by a Commissioner or employee of his or her official duty time; use of official facilities, including office space, machines, or supplies, at any time; or use of the services of other employees during their official duty hours;
9. Outside employment or other activities which impair the Commissioner's or employee's mental or physical capacities to perform Commission duties and responsibilities in an acceptable manner; or
10. Use of information obtained as a result of state employment that is not freely available to the general public or would not be made available upon request. However, written authorization for the use of any such information may be given when the Commission determines that such use would be in the public interest.

**C.** Commissioners and employees shall not receive any salary or anything of monetary value from a private source as compensation for the Commissioner's or employee's services to the state.

**D.** Commissioners and employees are encouraged to engage in teaching, lecturing, and writing that is not prohibited by law or this Article. However, Commissioners an employees shall not, either with or without compensation, engage in teaching or writing that is dependent on information obtained as a result of his or her Commission employment, except when that information has been made available to the public or will be made available on request, or when the Commission gives written authorization for the use of nonpublic information on the basis that the use is in the public interest.

**E.** This rule does not preclude a Commissioner or employee from participating in the activities of or acceptance of an award for meritorious public contribution or achievement given by a charitable, religious, professional, social, fraternal, nonprofit, educational, recreational, public service or civic organization.

**F.** An employee who intends to engage in outside employment shall obtain the approval of the Executive Director. The request shall include the name of the person, group, or organization for whom the work is to be performed, the nature of the services to be rendered, the proposed hours of work, or approximate dates of employment, and the

employee's certification as to whether the outside employment (including teaching, writing or lecturing) will depend in any way on information obtained as a result of the employee's official position. The employee will receive, from the Executive Director, written notice of approval or disapproval of any written request. A record of the decision shall be placed in each employee's official personnel folder.

**R2-20-309. Financial interests**

**A.** Commissioners and employees shall not engage in, directly or indirectly, a financial transaction as a result of, or primarily relying on, information obtained through the Commissioner's or employee's duties or employment.

**B.** Commissioners and employees shall not have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with the Commissioner's or employee's official duties and responsibilities, except in cases where the Commissioner or employee makes full disclosure, and disqualifies himself or herself from participating in any decisions, approval, disapproval, recommendation, the rendering of advice, investigation, or in any proceeding of the Commission in which the financial interest is or appears to be affected. Full disclosure by a Commissioner or employee will require that individual to submit a written statement to the Executive Director or Chair disclosing the particular financial interest which conflicts substantially, or appears to conflict substantially, with the Commissioner's or employee's duties and responsibilities.

**C.** Commissioners and employees shall disqualify themselves from a proceeding in which the Commissioner's or employee's impartiality might reasonably be questioned, such as in a situation where the Commissioner or employee knows that he or she, or his or her family member, has an interest in the subject matter in controversy or is a party to the proceeding, or has any other interest that could be substantially affected by the outcome of the proceeding.

**D.** This rule does not preclude a Commissioner or employee from having a financial interest or engaging in financial transactions to the same extent as a private citizen not employed by the Commission, as long as the Commissioner's or employee's financial interest does not conflict with official Commission duties.

**R2-20-310. Political and organization activity**

**A.** Due to the Commission's role in the political process, the following restrictions on political activities are required:

1. Commissioners and employees shall not advocate for the election or defeat of a candidate, nor make contributions to a candidate, political party, or political committee subject to the jurisdiction of the Commission. Commissioners and employees, however, are not prohibited from signing candidate nomination petitions;
2. Commissioners and employees shall not provide volunteer or paid services for a candidate, political party or political committee subject to the jurisdiction of the Commission; and
3. Commissioners and employees shall not display partisan buttons, badges or other insignia on Commission premises.

**B.** Employees on leave, leave without pay, or on furlough or terminal leave, even though the employees' resignations have been accepted, are subject to the restrictions of this rule. A separated employee who has received a lump-sum payment for annual leave, however, is not subject to the restrictions during the period covered by the lump-sum payment or thereafter, provided he or she does not return to state

employment during that period. An employee is not permitted to take a leave of absence to work with a political candidate, committee, or organization or become a candidate for office despite any understanding that he or she will resign his or her position if nominated or elected.

**C.** A Commissioner or employee is accountable for political activity by another person acting as his or her agent or under the Commissioner's or employee's direction or control if the Commissioner or employee is thus accomplishing what he or she may not lawfully do directly and openly.

**R2-20-311. Membership in associations**

Commissioners or employees who are members of nongovernmental associations or organizations shall avoid activities on behalf of those associations or organizations that are incompatible with their official positions.

**R2-20-312. Use of state property**

A Commissioner or employee shall not directly or indirectly use, or allow the use of, state property of any kind, including property leased to the state, for other than officially approved activities. Commissioners and employees have a positive duty to protect and conserve state property including equipment, supplies, and other property entrusted or issued to him or her.

## Article 4. Audits

### R2-20-401. Purpose and scope

This article prescribes procedures for conducting examinations and audits of participating candidates' campaign finances.

### R2-20-402. General

The Commission may conduct an examination and audit of the receipts, disbursements, debts and obligations of each candidate. In addition, the Commission may conduct other examinations and audits as it deems necessary to carry out the provisions of the Act and regulations. Information obtained pursuant to any audit and examination may be used by the Commission as the basis, or partial basis, for its repayment determinations.[2]

### R2-20-402.01. Random audits

To ensure compliance with the Act and Commission rules, the Commission shall conduct random audits of 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 and legislative candidates for audit shall be determined by random lot at a Commission meeting. Candidates shall not be subject to selection for random audit for the general election period that were selected for random audit following the primary election period.

### R2-20-403. Conduct of fieldwork

**A.** The Commission will provide the candidate 2 days' notice of the Commission's intention to commence fieldwork on the audit and examination. The Commission will conduct fieldwork at a site provided by the candidate. During or after fieldwork, the Commission may request additional or updated information, which expands the coverage dates of information previously provided. During or after fieldwork, the Commission may also request additional information that was created by or becomes available to the candidate that is of assistance in the Commission's audit. The candidate shall produce the additional or updated information no later than 2 days after service of the Commission's request.

**B.** On the date scheduled for the commencement of fieldwork, the candidate shall facilitate the examination or audit by making records available in one central location, such as the Commission's office space, or shall provide the Commission with office space and records. The candidate shall be present at the site of the fieldwork. The candidate shall be familiar with the candidate's records and shall be available to the Commission to answer questions and to aid in locating records.[3]

**C.** If the candidate fails to provide adequate office space, personnel or committee records, the Commission may seek judicial intervention to enforce the request or assess other penalties.

**D.** If, in the course of the examination or audit process, a dispute arises over the documentation sought, the candidate may seek review by the Commission of the

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[2] For computation of time, refer to A.A.C. R2-20-103.

[3] The candidate and the campaign committee treasurer shall attend the examination, or shall appoint such campaign workers to attend who have the same knowledge of the campaign's finances and are authorized to answer questions and help locate records.

issues raised. To seek review, the candidate shall submit a written statement within 5 days after the disputed Commission request is made, describing the dispute and indicating the candidate's proposed alternatives.

**R2-20-404. Preliminary audit report**

**A.** After the completion of fieldwork, the auditors may prepare a written preliminary audit report, which will be provided to the candidate after it is reviewed by the Executive Director. The preliminary audit report may include:

1. An evaluation of procedures and systems employed by the candidate to comply with applicable provisions of the Act and Commission rules;
2. The accuracy of statements and campaign finance reports filed with the Secretary of State by the candidate; and
3. Preliminary findings.

**B.** The candidate may submit in writing within 10 days after receipt of the preliminary audit report, legal and factual materials disputing or commenting on the proposed findings contained in the preliminary audit report. In addition, the candidate shall submit any additional documentation requested by the Commission.

**C.** If the preliminary audit report cannot be completed, the Commission shall notify the candidate in writing that the audit report will not be completed.

**R2-20-405. Final audit report**

**A.** Before voting on whether to approve and issue a final audit report, the Commission will consider any written legal and factual materials timely submitted by the candidate in accordance with A.A.C. R2-20-404. The Commission-approved final audit report may address issues other than those contained in the preliminary audit report.

**B.** The final audit report may identify issues that warrant referral for possible enforcement proceedings.

**C.** Addenda to the final audit report may be approved and issued by the Commission from time to time as circumstances warrant and as additional information becomes available. Such addenda may be based on follow-up fieldwork conducted, or information ascertained by the Commission in the normal course of carrying out its responsibilities. The procedures set forth in A.A.C. R2-20-404 and subsections A and B of this rule will be followed in preparing such addenda.

**R2-20-406. Release of audit report**

**A.** The Commission will consider the final audit report specified in A.A.C. R2-20-405 in an open meeting. The Commission will provide the candidate with copies of the final audit report to be considered in an open meeting 24 hours prior to the public meeting.

**B.** Following Commission approval of the final audit report, the report will be forwarded to the candidate within 5 days after the public meeting.

## Article 5. Rulemaking

### R2-20-501. Purpose and scope

The article prescribes the procedure for the submission, consideration and disposition of rulemaking petitions filed with the Commission, establishes the conditions under which the Commission may identify and respond to petitions for rule making, and informs the public of the procedures the agency follows in response to such petitions.

### R2-20-502. Procedural requirements

**A.** Any interested person may file with the Commission a written petition for the issuance, amendment, or repeal of an administrative rule implementing any of the Citizens Clean Elections Act.

**B.** The petition shall:

1. Include the name and address of the petitioner or agent. An authorized agent of the petitioner may submit the petition, but the agent shall disclose the identity of his or her principal;
2. Identify itself as a petition for the issuance, amendment, or repeal of a rule;
3. Identify the specific section of the regulations to be affected;
4. Set forth the factual and legal grounds on which the petitioner relies, in support of the proposed action; and
5. Be addressed and submitted to the Commission.

**C.** The petition may include draft regulatory language that would effectuate the petitioner's proposal.

**D.** The Commission may, in its discretion, treat a document that fails to conform to the format requirements of subsection B of this rule as a basis for rule making addressing issues raised in a petition.

### R2-20-503. Processing of petitions

**A.** Within 10 days of receiving a petition, the Commission shall send a letter to the petitioner acknowledging the receipt of the petition and informing the petitioner that the Commission will review and decide whether to deny or accept the petition. To assist in determining whether a rule making proceeding should be initiated, the Commission may publish a Notice of Availability on the Commission web site or otherwise post notice, stating that the petition is available for public inspection in the Commission's Office and that statements in support of or in opposition to the petition may be filed within a stated period after publication of the Notice of Availability.

**B.** If the Commission decides a public hearing on the petition would help determine whether to commence a rule making proceeding, it will publish an appropriate notice of the hearing on the Commission web site or otherwise post notice, to notify interested persons and to invite their participation in the hearing.

**C.** The Commission will consider all comments regarding whether or not rule making proceedings should be initiated.

### R2-20-504. Disposition of petitions

**A.** After considering the comments and any other information relevant to the subject matter of the petition, the Commission will decide whether to initiate a rule making based on the filed petition.

**B.** If the Commission decides to initiate rule making proceedings, it shall file a Notice of Proposed Rule Making Docket Opening and the proposed rule, in the format prescribed in A.R.S. § 41-1022, with the Secretary of State's office for publication in

the Arizona Register. After the Commission approves the proposed rule, the Commission will accept public comments on the proposed rule for 60 days. After consideration of the comments received in the 60-day comment period, the Commission may adopt the rule in open meeting.

**C.** If the Commission decides not to initiate rule making, it will give notice of this action by publishing a Notice of Disposition on the Commission web site, or otherwise post notice, and by sending a letter to the petitioner. The Notice of Disposition will include a brief statement of the grounds for the Commission's decision.

**R2-20-505. Commission considerations**

The Commission's decision on the petition for rule making may include, but will not be limited to, the following considerations:

**A.** The Commission's statutory authority;
**B.** Policy considerations;
**C.** The desirability of proceeding on a case-by-case-basis;
**D.** The necessity or desirability of statutory revision;
**E.** Available agency resources; and
**F.** Substantive policy statements.

**R2-20-506. Administrative record**

**A.** The Commission record for the petition process consists of the following:
1. The petition, including all attachments on which it relies, filed by the petitioner;
2. Written comments on the petition that have been circulated to and considered by the Commission, including attachments submitted as a part of the comments;
3. Agenda documents, in the form they are circulated to and considered by the Commission in the course of the petition process;
4. All notices published on the Commission web site and in the Arizona Register, including the Notice of Availability and Notice of Disposition;
5. The transcripts or audiotapes of any public hearing on the petition;
6. All correspondence between the Commission and the petitioner, other commentators and state agencies pertaining to Commission consideration of the petition; and
7. The Commission's decision on the petition, including all documents identified or filed by the Commission as part of the record relied on in reaching its final decision.

**B.** The administrative record specified in subsection A of this rule is the exclusive record for the Commission's decision.

## Article 6. Ex Parte Communications

### R2-20-601. Purpose and scope

This Article prescribes procedures for handling ex parte communications made regarding Commission audits, investigations, and litigation. Rules governing such communications made in connection with Commission enforcement actions are found at A.A.C. R2-20-220.

### R2-20-602. Definitions

1. **"Ex parte communication"** means any written or oral communication, by any person outside the agency to any Commissioner or any employee, which imparts information or argument regarding prospective Commission action or potential action concerning:
   a. Any ongoing audit;
   b. Any pending investigation; or
   c. Any litigation matter.
2. **"Ex parte communication"** does not include the following communications:
   a. Public statements by any person in a public forum; or
   b. Statements or inquiries by any person limited to the procedural status of an open proceeding involving a Commission audit, investigation, or litigation matter.

### R2-20-603. Audits, investigations, and litigation

**A.** In order to avoid the possibility of prejudice, real or apparent, in Commission decision making, no person outside the Commission shall make, or cause to be made, to any Commissioner or employee, any ex parte communication regarding any audit undertaken by the Commission or any pending or prospective Commission decision regarding any investigation or litigation, including whether to initiate, settle, appeal, or make any other decision concerning an investigation or litigation matter.

**B.** A Commissioner or employee who receives an oral ex parte communication concerning any matters addressed in subsection A of this rule shall attempt to prevent the communication. If unsuccessful in preventing the communication, the Commissioner or employee shall advise the person making the communication that he or she will not consider the communication and shall, as soon after the communication as is reasonably possible, but no later than three business days after the communication, or prior to the next Commission discussion of the matter, whichever is earlier, prepare a statement setting forth the substance and circumstances of the communication, and deliver the statement to the Executive Director for placement in the applicable case file.

**C.** A Commissioner or employee who receives a written ex parte communication concerning any matters addressed in subsection A of this rule shall, as soon after the communication as is reasonably possible but no later than three business days after the communication, or prior to the next Commission discussion of the matter, whichever is earlier, deliver a copy of the communication to the Executive Director for placement in the applicable case file.

### R2-20-604. Sanctions

Any person who becomes aware of a possible violation of this Article shall notify the Executive Director in writing of the facts and circumstances of the alleged violation. The

Executive Director shall recommend to the Commission the appropriate action to be taken. The Commission shall determine the appropriate action by at least three votes.

## Article 7. Use of Funds and Repayment

### R2-20-701. Purpose and scope

A participating candidate may spend clean elections monies only for reasonable and necessary expenses that are directly related to the campaign of that participating candidate.

### R2-20-702. Use of Campaign Funds

**A.** A participating candidate shall use funds in the candidate's current campaign account to pay for goods and services for direct campaign purposes only. Funds shall be disbursed and reported in accordance with A.R.S. § 16-948(C).

**B.** A participating candidate's payment from a campaign account to a political committee or civic organization is not a contribution if the payment is reasonable in relation to the value received. Payment of customary charges for services rendered, such as for printing voter or telephone lists, and payment of not more than $200 per person to attend a political event open to the public or to party members shall be considered reasonable in relation to the value received.

**C.** A participating candidate shall not use funds in the candidate's campaign account for:

1. Costs of legal defense in any campaign law enforcement proceeding or for any affirmative claim or litigation in court or before the Commission regarding a campaign. This prohibition does not bar use of campaign funds for payments to attorneys or certified accountants for proactive compliance advice and assistance.
2. Food and beverages for staff and volunteers exceeding $11 for breakfast, $16 for lunch, and $27 for dinner, per person.
3. Personal use, which includes, but is not limited to, any item listed below:
   a. Household food items or supplies.
   b. Clothing, other than items of de minimis value that are used in the campaign, such as campaign "t-shirts" or caps with campaign slogans.
   c. Tuition payments, other than those associated with training campaign staff.
   d. Mortgage, loan, rent, lease or utility payments:
      i. For any part of any personal residence of the candidate or a member of the candidate's family; or
      ii. For real or personal property that is owned or leased by the candidate or a member of the candidate's family and used for campaign purposes, to the extent the payments exceed the fair market value of the property usage.
   e. Admission to a sporting event, concert, theater or other form of entertainment, unless part of a specific campaign activity.
   f. Dues, fees or gratuities at a country club, health club, recreational facility or other nonpolitical organization, unless they are part of the costs of a specific fundraising event that takes place on the organization's premises.
   g. Gifts or donations.
   h. Extended warranties or other similar purchase options that extend beyond the campaign.
4. Payment to a candidate or a candidate's family member, as defined in R2-20-101(13), or an enterprise owned in whole or part by a candidate or family member, for the provisions of goods or services to the extent the payments exceed the fair market value of the goods or services. All payments made to family members or to enterprises owned in whole or part by the candidate or a

family member shall be clearly itemized and indicated as such in all campaign finance reports.

**D.** Participating candidates may purchase fixed assets with a value not to exceed $800. Fixed assets, including accessories, purchased with campaign funds that can be used for non-campaign purposes with a value of $200 or more shall be turned into the Commission no later than 14 days after the primary election or the general election if the candidate was successful in the primary. For purposes of determining whether a fixed asset is valued at $200 or more, the value shall include any accessories purchased for use with the fixed asset in question. A candidate may elect to keep an item by reimbursing the Commission for 80% of the original purchase price including the cost of accessories.

**E.** During the primary election period, a participating candidate shall not make any expenditure greater than the difference between

1. the sum of early contributions received plus public funds disbursed through the primary election period; less
2. all other expenditures made during and for the exploratory, qualifying and primary election periods.

**F.** During the general election period, a participating candidate shall not make any expenditure greater than the difference between

1. the amount of public funds disbursed during and for the general election period; less
2. all other expenditures made during and for the general election period.

**R2-20-702.01. Use of Assets**

A participating candidate may use assets such as signs, pamphlets, and office equipment from a prior election cycle only after the candidate's current campaign pays for the assets in an amount equal to the fair market value of the assets, which amount shall in no event be less than one-fifth (1/5) the original purchase price of such assets. If the candidate was a participating candidate during the prior election cycle, the cash payment shall be made to the Fund. If the candidate was not a participating candidate during the prior election cycle, the cash payment shall be made to the prior campaign. If the prior campaign account of a nonparticipating candidate is closed, the payment shall be made to the candidate.

**R2-20-703. Documentation for direct campaign expenditures**

**A.** In addition to the general books and records requirements prescribed in A.A.C. R2-20-111, participating candidates shall comply with the following requirements:

1. All participating candidates shall have the burden of proving that expenditures made by the candidate were for direct campaign purposes. The candidate shall obtain and furnish to the Commission on request any evidence regarding direct campaign expenses made by the candidate as provided in subsection 2 of this rule.
2. All participating candidates shall retain records with respect to each expenditure and receipt, including bank records, vouchers, worksheets, receipts, bills and accounts, journals, ledgers, fundraising solicitation material, accounting systems documentation, and any related materials documenting campaign receipts and disbursements, for a period of three years, and shall present these records to the Commission on request.
3. All participating candidates shall maintain a list of all fixed assets whose purchase price exceeded $200 when acquired by the campaign. The list shall

include a brief description of each fixed asset, the purchase price, the date it was acquired, the method of disposition and the amount received in disposition.

**B.** Upon written request from a candidate, the Commission shall determine whether a planned campaign expenditure or fund-raising activity is permissible under the Act. To make a request, a candidate shall submit a written description of the planned expenditure or activity to the Commission. The Commission shall inform the candidate whether an enforcement action will be necessary if the candidate carries out the planned expenditure or activity. The Commission shall ensure that the candidate can rely on a "no action" letter. A "no action" letter applies only to the candidate who requested it.

**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.** Any expenditure made by the candidate or the candidate's committee that cannot be documented as a direct expenditure shall promptly be repaid to the Fund with the candidate's personal monies.

**R2-20-704. Repayment**

**A.** In general, the Commission may determine that a participating candidate who has received payments from the Fund must repay the Fund as determined by the Commission.

1. A candidate who has received payments from the Fund shall pay the Fund any amounts that the Commission determines to be repayable. In making repayment determinations, the Commission may utilize information obtained from audits and examinations or otherwise obtained by the Commission in carrying out its responsibilities.
2. The Commission will notify the candidate of any repayment determinations made under this section as soon as possible, but not later than one year after the day of the election.
3. Once the candidate receives notice of the Commission's repayment determination, the candidate should give preference to the repayment over all other outstanding obligations of the candidate, except for any taxes owed by the candidate.
4. Repayments may be made only from the following sources: personal funds of the candidate, funds in the candidate's current election campaign account, and

any additional funds raised subject to the limitations and prohibitions of the Act.

5. The Commission may withhold the portion of funds required to be repaid from future payments to a participating candidate if the Commission has made a repayment determination.

**B.** The Commission may determine that a participating candidate who has received payments from the Fund must repay the Fund under any of the following circumstances:

1. Payments in excess of candidate's entitlement. If the Commission determines that any portion of the payments made to the candidate was in excess of the aggregate payments to which such candidate was entitled, it will so notify the candidate, and such candidate shall pay to the Fund an amount equal to such portion.
2. Use of funds not for direct campaign expenses. If the Commission determines that any amount of any payment to an eligible candidate from the Fund was used for purposes other than direct campaign purposes described in A.A.C. R2-20-702, it will notify the candidate of the amount so used, and such candidate shall pay to the Fund an amount equal to such amount.
3. Expenditures that were not documented in accordance with campaign finance reporting requirements, expended in violation of State or Federal law, or used to defray expenses resulting from a violation of State or Federal law, such as the payment of fines or penalties.
4. Surplus. If the Commission determines that a portion of payments from the Fund remains unspent after all direct campaign expenses have been paid, it shall so notify the candidate, and such candidate shall pay the Fund that portion of surplus funds.
5. Income on investment or other use of payments from the Fund. If the Commission determines that a candidate received any income as a result of an investment or other use of payments from the Fund, it shall so notify the candidate, and such candidate shall pay to the Fund an amount equal to the amount determined to be income, less any Federal, State or local taxes on such income.
6. Unlawful acceptance of contributions by an eligible candidate. If the Commission determines that a participating candidate accepted contributions, other than early contributions or qualifying contributions, it shall notify the candidate of the amount of contributions so accepted, and the candidate shall pay to the Fund an amount equal to such amount, plus any civil penalties assessed.

**C.** Repayment determination procedures. The Commission's repayment determination will be made in accordance with the following procedures:

1. Repayment determination. The Commission will send a repayment determination pursuant to Article 2, Compliance and Enforcement Procedures, and will set forth the legal and factual reasons for such determination, as well as the evidence upon which any such determination is based. The candidate shall repay, in accordance with subsection D of this rule, the amount that the Commission has determined to be repayable.
2. Administrative review of repayment determination. If a candidate disputes the Commission's repayment determination, he or she may request an administrative appeal of the determination in accordance with A.R.S. § 41-1092 et. seq.

**D.** Repayment period.

1. Within 30 days of service of the notice of the Commission's repayment determination, the candidate shall repay the amounts the Commission has determined must be repaid. Upon application by the candidate, the Commission may grant an extension of time in which to make repayment.
2. If the candidate requests an administrative appeal of the Commission's repayment determination of this section, the time for repayment will be suspended until the Commission has concluded its review of the Administrative Law Judge's (ALJ) decision. Within 30 days after service of the notice of the Commission's review of the ALJ's decision, the candidate shall repay the amounts that the Commission has determined to be repayable. Upon application by the candidate, the Commission may grant an extension of up to 30 days in which to make repayment.
3. Interest shall be assessed on all repayments made after the initial 30-day repayment period or the 30-day repayment period established by this section. The amount of interest due shall be the greater of:
   a. An amount calculated in accordance with A.R.S. § 44-1201(A); or
   b. The amount actually earned on the funds set aside or to be repaid under this rule.

**R2-20-705. Additional audits or repayment determinations**

**A.** The Commission may conduct an additional audit or examination of any candidate in any case in which the Commission finds reason to believe that a violation of a statute or regulation over which the Commission has jurisdiction has occurred or is about to occur.

**B.** The Commission may make additional repayment determinations after it has made an initial repayment determination pursuant to A.A.C. R2-20-704. The Commission may make additional repayment determinations where there exist facts not used as the basis for any previous determination. Any such additional repayment determination will be made in accordance with the provisions of this Article.

**Historical Index**

**Citizens Clean Elections Act, A.R.S., Title 16, Chapter 6, Article 2**

History Note: H.B. 2779 amended the following effective 8/2/2012

- 16-901.01 Limitations on certain unreported expenditures and contributions
- 16-941 Limits on spending and contributions for political campaigns
- 16-945 Limits on early contributions
- 16-946 Qualifying Contributions
- 16-947 Certification as a participating candidate
- 16-949 Controls on spending from citizens clean elections fund
- 16-950 Qualification for clean elections funding
- 16-951 Clean elections funding
- 16-952 One party dominant legislative district
- 16-954 Disposition of excess monies
- 16-956 Voter education and enforcement duties
- 16-958 Manner of filing reports
- 16-959 Inflationary and other adjustments of dollar values
- 16-961 Definitions

History Note: S.B. 1138 amended the following effective 5/7/2012

- 16-941 Limits on spending and contributions for political campaigns
- 16-945 Limits on early contributions
- 16-958 Manner of filing reports

History Note: H.B. 2690 amended the following effective 9/17/07

- 16-905 Contribution limitations: civil penalty: complaint
- 16-941 Limits on spending and contributions for political campaigns
- 16-950 Qualification for clean campaign funding
- 16-952 Equal funding of candidates
- 16-953 return of monies to the citizens clean election fund
- 16-955 Citizens clean election commission: structure
- 16-956 Voter education and enforcement duties
- 16-958 Manner of filing reports
- 16-959 Inflationary and other adjustments of dollar values
- 16-961 Definitions

H.B. 2690 Repealed the following effective 9/17/07

- 16-944 Fees imposed on lobbyists

**Arizona Administration Code, Title 2, Chapter 20**

History Note: Amendments to commission rules were adopted on the following dates.

**Article 1. General Provisions**

- R2-20-101 (2),(4),(9),(15) & (18). January 28, 2004.
- R2-20-101(2),(4),(13),(16) & (19). March 30, 2004.
- R2-20-101 (11)-(22). May 22, 2007.

- R2-20-101 (23). September 17, 2009.
- R-20-101(8). April 21, 2011.
- R2-20-101(4), (10), (23), (24), (25). September 27, 2013.
- R2-20-102. September 27, 2013.
- R2-20104(8). September 29, 2011
- R2-20105(8). September 29, 2011
- R2-20-212 to R2-20-103(F-G) and R2-20-103(A),(C),(D),(E),(F)&(G). January 28, 2004.
- R2-20-103(G). March 30, 2004.
- R2-20-103 (B), (G) & (H). May 22, 2007.
- R2-20-104(D), (I) & (J). August 21, 2001.
- R2-20-104 (C) & (G). April 2, 2002.
- R2-20-104. January 28, 2004.
- R2-20-104(B), (F) & (I). March 30, 2004.
- R2-20-104 (A)(B)(C)(D)(F)(H) & (I). May 22, 2007
- R2-20-104 (H) & (I). September 13, 2007.
- R2-20-104(F). September 17, 2009.
- R2-20-104(C)(8). October 6, 2011.
- R2-20-104(D)(5). May 23, 2013.
- R2-20-105(C) & (F). August 21, 2001.
- R2-20-105 (D-H). April 30, 2002.
- R2-20-105(I). March 25, 2003.
- R2-20-105 (B)(D)(E)(F)(G) & (I). May 22, 2007.
- R2-20-105 (E) & (G). September 13, 2007.
- R2-20-105(C). January 17, 2008.
- R2-20-105(B)(C). January 17, 2008.
- R2-20-105(C). October 6, 2011.
- R2-20-105(C)(D). February 9, 2012.
- R2-20-105(J). May 23, 2013.
- R2-20-106 (B)(D)(E) & (F). May 22, 2007.
- R2-20-230 moved to R2-20-107 January 28, 2004.
- R2-20-107(A)(B)(C)(E)(F)(G)(H) & (I). January 28, 2004.
- R2-20-107 (B)(G)(H)(I) & (J). May 22, 2007.
- R2-20-107(D). September 17, 2009.
- R2-20-107(D)(E)(H)(1)(2). September 17, 2009.
- R2-20-107(E). October 6, 2011.
- R2-20-107(A),(D)&(K). November 21, 2013.
- R2-20-107(D). July 23, 2013.
- R2-20-108 (A)(B)(C) & (D). May 22, 2007.
- R2-20-108 (A)(C). May 20, 2011.
- R2-20-108(C). June 24, 2011.
- R2-20-109(C)(D). August 21, 2001.
- R2-20-109. January 28, 2004.
- R2-20-109(B)(C). March 30, 2004.
- R2-20-109(B)(1). November 3, 2005.
- R2-20-109 (A-G). May 22, 2007.
- R2-20-109 (G). September 13, 2007.

- R2-20-109 (G)(2). January 17, 2008.
- R2-20-109(A)(3)(4). September 17, 2009.
- R2-20-109. October 6, 2011.
- R2-20-109(A) & (C). August 29, 2013.
- R2-20-109(A-G). September 27, 2013.
- R2-20-109(G). May 22, 2014.
- R2-20-109(F). September 11, 2014.
- R2-20-110(B). October 6, 2011.
- R2-20-110. May 23, 2013.
- R2-20-110. July 23, 2015.
- R2-20-111(H). August 21, 2001.
- R2-20-111. January 28, 2004.
- R2-20-111(B). March 30, 2004.
- R2-20-111 (B) & (C). May 22, 2007
- R2-20-111(C). September 13, 2007.
- R2-20-111(B)(1)(f). September 17, 2009.
- R2-20-111(B). July 23, 2015.
- R2-20-112. August 21, 2001.
- R2-20-112. January 28, 2004.
- R2-20-112(D). August 23, 2007.
- R2-20-112(A-C). September 13, 2007.
- R2-20-112. October 22, 2009.
- R2-20-113. January 28, 2004.
- R2-20-113(A) & (B). March 30, 2004.
- R2-20-113 (A-G). May 22, 2007.
- R2-20-113(B). September 13, 2007.
- R2-20-113(A)(1),(B)(b)(i). November 19, 2009
- R2-20-113(F). November 19, 2009.
- R2-20-113. October 6, 2011.
- R2-20-113. July 23, 2015. (New Rule)

**Article 2. Compliance and Enforcement Procedures**

- R2-20-203(A)&(C) January 28, 2004
- R2-20-204. July 23, 2015.
- R2-20-205. January 28, 2004
- R2-20-205. July 23, 2015.
- R2-20-206. January 28, 2004
- R2-20-206. July 23, 2015.
- R2-20-208(A) & (B). January 28, 2004
- R2-20-212 (Rule moved to R2-20-103(F-G)). January 28, 2004
- R2-20-214(C). January 28, 2004
- R2-20-217(B). January 28, 2004
- R2-20-218. January 28, 2004
- R2-20-223. January 28, 2004
- R2-20-223(A). July 21, 2011
- R2-20-229 (Rule moved to R2-20-107) January 28, 2004
- R2-20-230 (Rule moved to R2-20-107). January 28, 2004
- R2-20-207(A) (B). September 13, 2007.

- R2-20-211(A) (B.) September 13, 2007.
- R2-20-213(C). September 13, 2007.
- R2-20-215(C). September 13, 2007.
- R2-20-222(A) & (B). September 13, 2007.
- R2-20-222(A) & (B). May 23, 2013.
- R2-20-222(C) September 27, 2013.
- R2-20-222(B-D). May 22, 2014.

**Article 3. Standard of Conduct for Commissioners and Employees**

History Note:

- R2-20-303 September 13, 2007.
- R2-20-304 September 13, 2007.

**Article 4. Audits**

History Note:

- R2-20-401. October 6, 2011.
- R2-20-401.1 October 6, 2011.
- R2-20-402 –R2-20-406 renumbered R2-20-702 - R2-20-706. January 28, 2004
- R2-20-402. January 28, 2004
- R2-20-402.01. June 21, 2007.
- R2-20-402.01. July 23, 2015.
- R2-20-403(B). March 20, 2004
- R2-20-404(A). January 17, 2008.

**Article 5. Rulemaking**

No Historical Notes.

**Article 6. Ex Parte Communications**

No Historical Notes

**Article 7. Use of Funds and Repayment**

History Note:

- R2-20-702 - R2-20-706 renumbered R2-20-402 - R2-20-406. January 28, 2004
- R2-20-701. January 28, 2004
- R2-20-702. January 28, 2004
- R2-20-702. March 30, 2004
- R2-20-702(C)(1). September 29, 2011
- R2-20-702. September 29, 2011
- R2-20-702(C) March 30, 2004
- R2-20-703(A) March 30, 2004
- R2-20-703 (from R2-20-107(C)(E)(F)). January 28, 2004
- R2-20-703(A)(3). July 23, 2015.
- R2-20-704(D). March 30, 2004.
- R2-20-704(A)(4). July 23, 2015.
- R2-20-710(A-C). January 28, 2004.
- R2-20-707 moved to R2-20-704. January 28, 2004
- R2-20-708 moved to R2-20-705. January 28, 2004
- R2-20-709. January 28, 2004
- R2-20-710 to R2-20-703(A). January 28, 2004

- R2-20-702(B) (C). March 30, 2004
- R2-20-702(D) (E). May 22, 2007.
- R2-20-702(7). November 19, 2009.
- R2-20-702(C) (2) (3) (3) (h) (6). February 17, 2011.
- R2-20-702(C) & (D). October 6, 2013.
- R2-20-702(C)(6). May 23, 2013.
- R2-20-702.01. July 12, 2007.
- R2-20-702.01. September 17, 2009.
- R2-20702(C). February 17, 2011
- R2-20-702. October 6, 2011

# NOTICES OF FINAL EXEMPT RULEMAKING

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

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

## NOTICE OF FINAL EXEMPT RULEMAKING

### TITLE 2. ADMINISTRATION

### CHAPTER 20. CITIZENS CLEAN ELECTIONS COMMISSION

[R15-171]

### 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, 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:**
R2-20-109(D) - October 29, 2015
R2-20-109(F) - October 30, 2015

**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: 21 A.A.R. 781, June 5, 2015
Notice of Proposed Exempt Rulemaking: 21 A.A.R. 1977, September 18, 2015
Notice of Proposed Exempt Rulemaking: 21 A.A.R. 2043, September 25, 2015

**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@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

The Commission adopted amendments to:

R2-20-109(D)(2)(a)(b) – clarifies the time period in which mileage reimbursements and expenditures must be reported. Allows for direct fuel purchases by the candidate for the candidate's automobile and what documentation must be kept regarding direct fuel purchases.

R2-20-109(F)(3) – adds language reemphasizing that an independent expenditure can be made on behalf of any candidate, participating candidate or non-participating candidate. Codifies in rule statutory language stating an expenditure against a candidate is considered an expenditure on behalf of the opposing candidate or candidates. Provides that political committees that take contributions or makes expenditures for candidate elections is subject to the penalties in the Clean Elections Act. Updates rule language to add clarity in view of passage of HB 2649, which amended the definition of political committee.

R2-20-109(F)(6) – clarifies filing requirements to reflect statutory requirements.

R2-20-109(F)(8) – clarifies Commission's auditing authority to eliminate potentially confusing language.

R2-20-109(F)(12) – these provisions update the Commission's rules to address the passage of HB2649, which amended the definition of political committee and to provide further clarity to the requirements applicable to those making independent expenditures.

The amendments stem from a Commission review of the rules and submitted public comment and were adopted in open meetings on October 29 and 30, 2015.

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):**

The adopted rule amendments clarify the Commission's expenditure reporting requirements for candidates, persons, entities, and associations. The adopted rule amendments were developed by the Commission during a review of its rules, the consideration of submitted public comment, and were adopted in open meetings on October 29 and 30, 2015. The rule was proposed in an open meeting on August 20, 2015. A Notice of Proposed Rulemakings related to these Sections was previously filed and changes are being made to the subsections R2-20-109(D) and (F) only. Changes between the proposed rulemaking and the adopted rulemaking are not substantive and there were no Notices of Supplemental Proposed Rulemakings previously filed.

**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. Reporting Requirements

## ARTICLE 1. GENERAL PROVISIONS

**R2-20-109. Reporting Requirements**

**A.** No change
**B.** No change
**C.** No change
**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. ~~Traditional candidates may reimburse in a similar fashion, but are not required to stay within the State mileage rate.~~
   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 (3)(a), 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.** No change
**F.** 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 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 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. 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 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.

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)~~, and comply with the requirements of A.R.S. § 16-913~~.
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 and 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. ~~any exempt entity pursuant to Article 4 of these rules~~.
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.
10. Neither a form filed seeking an exemption pursuant to this subsection (F) nor a Clean Elections Act independent expenditure report filed as specified by A.R.S. § 16-9958 constitutes an admission that the filer is or should be considered a political committee. The grant of an exemption pursuant to this subsection (F) does not constitute a finding or determination that the filer is or should be considered a political committee.
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. No change
    a. An entity shall not be found to be a political committee under A.R.S. § 16-901(20)(f) unless, a preponderance of the evidence establishes that during a two-year legislative election cycle, the total reportable contributions made by the entity plus the total reportable expenditures made by the entity exceeds both $500 and 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.

(3) 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.

b. Notwithstanding subsections (2) and (3) 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:

i. The amount that the recipient organization spends on reportable contributions and reportable expenditures, plus

ii. 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.

iii. Notwithstanding subsection (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.

**G.** No change

# Campaign Contributions and Expenses, A.R.S., Title 16, Chapter 6, Article 1

**§16-901 Definitions**

In this chapter, unless the context otherwise requires:

1. "**Agent**" means, with respect to any person other than a candidate, any person who has oral or written authority, either express or implied, to make or authorize the making of expenditures as defined in this section on behalf of a candidate, any person who has been authorized by the treasurer of a political committee to make or authorize the making of expenditures or a political consultant for a candidate or political committee.
2. "**Candidate**" means an individual who receives or gives consent for receipt of a contribution for his nomination for or election to any office in this state other than a federal office.
3. "**Candidate's campaign committee**" means a political committee designated and authorized by a candidate.
4. "**Clearly identified candidate**" means that the name, a photograph or a drawing of the candidate appears or the identity of the candidate is otherwise apparent by unambiguous reference.
5. "**Contribution**" means any gift, subscription, loan, advance or deposit of money or anything of value made for the purpose of influencing an election including supporting or opposing the recall of a public officer or supporting or opposing the circulation of a petition for a ballot measure, question or proposition or the recall of a public officer and:

   (a) Includes all of the following:

   (i) A contribution made to retire campaign debt.

   (ii) Money or the fair market value of anything directly or indirectly given or loaned to an elected official for the purpose of defraying the expense of communications with constituents, regardless of whether the elected official has declared his candidacy.

   (iii) The entire amount paid to a political committee to attend a fund-raising or other political event and the entire amount paid to a political committee as the purchase price for a fund-raising meal or item, except that no contribution results if the actual cost of the meal or fund-raising item, based on the amount charged to the committee by the vendor, constitutes the entire amount paid by the purchaser for the meal or item, the meal or item is for the purchaser's personal use and not for resale and the actual cost is the entire amount paid by the purchaser in connection with the event. This exception does not apply to auction items.

   (iv) Unless specifically exempted, the provision of goods or services without charge or at a charge that is less than the usual and normal charge for such goods and services. The acquisition or use of campaign assets by a committee that are paid for with the candidate's personal monies, including campaign signs and other similar promotional materials, is a contribution and is reportable by the candidate's campaign committee as a contribution to the campaign.

   (b) Does not include any of the following:

   (i) The value of services provided without compensation by any individual who volunteers on behalf of a candidate, a candidate's campaign committee or any other political committee.

   (ii) Money or the value of anything directly or indirectly provided to defray the expense of an elected official meeting with constituents if the elected official is

engaged in the performance of the duties of his office or provided by the state or a political subdivision to an elected official for communication with constituents if the elected official is engaged in the performance of the duties of his office.

(iii) The use of real or personal property, including a church or community room used on a regular basis by members of a community for noncommercial purposes, that is obtained by an individual in the course of volunteering personal services to any candidate, candidate's committee or political party, and the cost of invitations, food and beverages voluntarily provided by an individual to any candidate, candidate's campaign committee or political party in rendering voluntary personal services on the individual's residential premises or in the church or community room for candidate-related or political party-related activities, to the extent that the cumulative value of the invitations, food and beverages provided by the individual on behalf of any single candidate does not exceed one hundred dollars with respect to any single election.

(iv) Any unreimbursed payment for personal travel expenses made by an individual who on his own behalf volunteers his personal services to a candidate.

(v) The payment by a political party for party operating expenses, party staff and personnel, party newsletters and reports, voter registration and efforts to increase voter turnout, party organization building and maintenance and printing and postage expenses for slate cards, sample ballots, other written materials that substantially promote three or more nominees of the party for public office and other election activities not related to a specific candidate, except that this item does not apply to costs incurred with respect to a display of the listing of candidates made on telecommunications systems or in newspapers, magazines or similar types of general circulation advertising.

(vi) Independent expenditures.

(vii) Monies loaned by a state bank, a federally chartered depository institution or a depository institution the deposits or accounts of which are insured by the federal deposit insurance corporation or the national credit union administration, other than an overdraft made with respect to a checking or savings account, that is made in accordance with applicable law and in the ordinary course of business. In order for this exemption to apply, this loan shall be deemed a loan by each endorser or guarantor, in that proportion of the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors, the loan shall be made on a basis that assures repayment, evidenced by a written instrument, shall be subject to a due date or amortization schedule and shall bear the usual and customary interest rate of the lending institution.

(viii) A gift, subscription, loan, advance or deposit of money or anything of value to a national or a state committee of a political party specifically designated to defray any cost for the construction or purchase of an office facility not acquired for the purpose of influencing the election of a candidate in any particular election.

(ix) Legal or accounting services rendered to or on behalf of a political committee or a candidate, if the only person paying for the services is the regular employer of the individual rendering the services and if the services are solely for the purpose of compliance with this title.

(x) The payment by a political party of the costs of campaign materials, including pins, bumper stickers, handbills, brochures, posters, party tabloids and yard signs, used by the party in connection with volunteer activities on behalf of any nominee of the party or the payment by a state or local committee of a political party of the costs of voter registration and get-out-the-vote activities conducted by the committee if the payments are not for the costs of campaign materials or activities used in connection with any telecommunication, newspaper, magazine, billboard, direct mail or similar type of general public communication or political advertising.

(xi) Transfers between political committees to distribute monies raised through a joint fund-raising effort in the same proportion to each committee's share of the fund-raising expenses and payments from one political committee to another in reimbursement of a committee's proportionate share of its expenses in connection with a joint fund-raising effort.

(xii) An extension of credit for goods and services made in the ordinary course of the creditor's business if the terms are substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and size of obligation and if the creditor makes a commercially reasonable attempt to collect the debt, except that any extension of credit under this item made for the purpose of influencing an election that remains unsatisfied by the candidate after six months, notwithstanding good faith collection efforts by the creditor, shall be deemed receipt of a contribution by the candidate but not a contribution by the creditor.

(xiii) Interest or dividends earned by a political committee on any bank accounts, deposits or other investments of the political committee.

6. "**Earmarked**" means a designation, instruction or encumbrance that results in all or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or a candidate's campaign committee.

7. "**Election**" means any election for any initiative, referendum or other ballot measure, question or proposition or a primary, general, recall, special or runoff election for any office in this state other than the office of precinct committeeman and other than a federal office. For the purposes of sections 16-903 and 16-905, the general election includes the primary election.

8. "**Election cycle**" means the period beginning twenty-one days after a general election and ending twenty days after the next successive general election for a particular elected office for the purposes of sections 16-903 and 16-905.

9. "**Expenditures**" includes any purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value made by a person for the purpose of influencing an election in this state including supporting or opposing the recall of a public officer or supporting or opposing the circulation of a petition for a ballot measure, question or proposition or the recall of a public officer and a contract, promise or agreement to make an expenditure resulting in an extension of credit and the value of any in-kind contribution received. Expenditure does not include any of the following:

(a) A news story, commentary or editorial distributed through the facilities of any telecommunications system, newspaper, magazine or other periodical publication, unless the facilities are owned or controlled by a political committee, political party or candidate.

(b) Nonpartisan activity designed to encourage individuals to vote or to register to vote.
(c) The payment by a political party of the costs of preparation, display, mailing or other distribution incurred by the party with respect to any printed slate card, sample ballot or other printed listing of three or more candidates for any public office for which an election is held, except that this subdivision does not apply to costs incurred by the party with respect to a display of any listing of candidates made on any telecommunications system or in newspapers, magazines or similar types of general public political advertising.
(d) The payment by a political party of the costs of campaign materials, including pins, bumper stickers, handbills, brochures, posters, party tabloids and yard signs, used by the party in connection with volunteer activities on behalf of any nominee of the party or the payment by a state or local committee of a political party of the costs of voter registration and get-out-the-vote activities conducted by the committee if the payments are not for the costs of campaign materials or activities used in connection with any telecommunications system, newspaper, magazine, billboard, direct mail or similar type of general public communication or political advertising.
(e) Any deposit or other payment filed with the secretary of state or any other similar officer to pay any portion of the cost of printing an argument in a publicity pamphlet advocating or opposing a ballot measure.

10. "**Exploratory committee**" means a political committee that is formed for the purpose of determining whether an individual will become a candidate and that receives contributions or makes expenditures of more than five hundred dollars in connection with that purpose.
11. "**Family contribution**" means any contribution that is provided to a candidate's campaign committee by a parent, grandparent, spouse, child or sibling of the candidate or a parent or spouse of any of those persons.
12. "**Filing officer**" means the office that is designated by section 16-916 to conduct the duties prescribed by this chapter.
13. "**Identification**" means:
    (a) For an individual, his name and mailing address, his occupation and the name of his employer.
    (b) For any other person, including a political committee, the full name and mailing address of the person. For a political committee, identification includes the identification number issued on the filing of a statement of organization pursuant to section 16-902.01.
14. "**Incomplete contribution**" means any contribution received by a political committee for which the contributor's mailing address, occupation, employer or identification number has not been obtained and is not in the possession of the political committee.
15. "**Independent expenditure**" means an expenditure by a person or political committee, other than a candidate's campaign committee, that expressly advocates the election or defeat of a clearly identified candidate, that is made without cooperation or consultation with any candidate or committee or agent of the candidate and that is not made in concert with or at the request or suggestion of a candidate, or any committee or agent of the candidate. Independent expenditure includes an expenditure that is subject to the requirements of section 16-917, which requires a copy of campaign literature or advertisement to be sent to a candidate named or otherwise referred to in the literature or advertisement.
16. "**In-kind contribution**" means a contribution of goods or services or anything of value and not a monetary contribution. The use by a candidate's campaign committee of a distinctive

trade name, trademark or trade dress item, including a logo, that is owned by a business or other entity that is owned by that candidate or in which the candidate has a controlling interest is deemed to be an in-kind contribution to the candidate's campaign committee and shall be reported as otherwise prescribed by law.

17. "**Itemized**" means that each contribution received or expenditure made is set forth separately.
18. "**Literature or advertisement**" means information or materials that are mailed, distributed or placed in some medium of communication for the purpose of influencing the outcome of an election.
19. "**Personal monies**" means any of the following:
    (a) Except as prescribed in paragraph 16 of this section, assets to which the candidate has a legal right of access or control at the time he becomes a candidate and with respect to which the candidate has either legal title or an equitable interest.
    (b) Salary and other earned income from bona fide employment of the candidate, dividends and proceeds from the sale of the stocks or investments of the candidate, bequests to the candidate, income to the candidate from trusts established before candidacy, income to the candidate from trusts established by bequest after candidacy of which the candidate is a beneficiary, gifts to the candidate of a personal nature that have been customarily received before the candidacy and proceeds received by the candidate from lotteries and other legal games of chance.
    (c) The proceeds of loans obtained by the candidate that are not contributions and for which the collateral or security is covered by subdivision (a) or (b) of this paragraph.
    (d) Family contributions.
20. "**Political committee**" means any of the following:
    (a) A candidate or a candidate's campaign committee.
    (b) A separate, segregated fund established pursuant to section 16-920, subsection A, paragraph 3.
    (c) An association or combination of persons that circulates petitions in support of the qualification of a ballot measure, question or proposition.
    (d) An association or combination of persons that circulates a petition to recall a public officer.
    (e) A political party.
    (f) An association or combination of persons that meets both of the following requirements:
        (i) Is organized, conducted or combined for the primary purpose of influencing the result of any election in this state or in any county, city, town or other political subdivision in this state, including a judicial retention election.
        (ii) Knowingly receives contributions or makes expenditures of more than five hundred dollars in connection with any election during a calendar year, including a judicial retention election.
    (g) A political organization.
    (h) An exploratory committee.
21. "**Political organization**" means an organization that is formally affiliated with and recognized by a political party including a district committee organized pursuant to section 16-823.

22. "**Political party**" means the state committee as prescribed by section 16-825 or the county committee as prescribed by section 16-821 of an organization that meets the requirements for recognition as a political party pursuant to section 16-801, 16-802 or 16-804.
23. "**Sponsoring organization**" means any organization that establishes, administers or contributes financial support to the administration of, or that has common or overlapping membership or officers with, a political committee other than a candidate's campaign committee.
24. "**Standing political committee**" means a political committee that satisfies all of the following:
    (a) Is active in more than one reporting jurisdiction in this state for more than one year.
    (b) Files a statement of organization as prescribed by section 16-902.01, subsection F.
    (c) Is any of the following as defined by paragraph 20 of this section:
        (i) A separate, segregated fund.
        (ii) A political party.
        (iii) A political committee as prescribed by paragraph 20, subdivision (f) of this section and that is organized for the purpose of making independent expenditures.
        (iv) A political organization.
25. "**Statewide office**" means the office of governor, secretary of state, state treasurer, attorney general, superintendent of public instruction, corporation commissioner or mine inspector.
26. "**Surplus monies**" means those monies of a political committee remaining after all of the committee's expenditures have been made and its debts have been extinguished.

**§16-901.01 Limitations on Certain Unreported Expenditures and Contributions**

**A.** For the purposes of this chapter, "expressly advocates" means:

1. Conveying a communication containing a phrase such as "vote for," "elect," "reelect," "support," "endorse," "cast your ballot for," "(name of candidate) in (year)," "(name of candidate) for (office)," "vote against," "defeat," "reject" or a campaign slogan or words that in context can have no reasonable meaning other than to advocate the election or defeat of one or more clearly identified candidates, or
2. Making a general public communication, such as in a broadcast medium, newspaper, magazine, billboard or direct mailer referring to one or more clearly identified candidates and targeted to the electorate of that candidate(s) that in context can have no reasonable meaning other than to advocate the election or defeat of the candidate(s), as evidenced by factors such as the presentation of the candidate(s) in a favorable or unfavorable light, the targeting, placement or timing of the communication or the inclusion of statements of the candidate(s) or opponents.

**B.** A communication within the scope of subsection A, paragraph 2 shall not be considered as one that expressly advocates merely because it presents information about the voting record or position on a campaign issue of three or more candidates, so long as it is not made in coordination with a candidate, political party, agent of the candidate or party or a person who is coordinating with a candidate or candidate's agent.

## Citizens Clean Elections Act, A.R.S., Title 16, Chapter 6, Article 2

**§16-940 Findings and Declarations.**

**A.** The people of Arizona declare our intent to create a clean elections system that will improve the integrity of Arizona state government by diminishing the influence of special-interest money, will encourage citizen participation in the political process, and will promote freedom of speech under the U.S. and Arizona Constitutions. Campaigns will become more issue-oriented and less negative because there will be no need to challenge the sources of campaign money.

**B.** The people of Arizona find that our current election-financing system:

1. Allows Arizona elected officials to accept large campaign contributions from private interests over which they have governmental jurisdiction;
2. Gives incumbents an unhealthy advantage over challengers;
3. Hinders communication to voters by many qualified candidates;
4. Effectively suppresses the voices and influence of the vast majority of Arizona citizens in favor of a small number of wealthy special interests;
5. Undermines public confidence in the integrity of public officials;
6. Costs average taxpayers millions of dollars in the form of subsidies and special privileges for campaign contributors;
7. Drives up the cost of running for state office, discouraging otherwise qualified candidates who lack personal wealth or access to special-interest funding; and
8. Requires that elected officials spend too much of their time raising funds rather than representing the public.

**§16-941 Limits on Spending and Contributions for Political Campaigns**

**A.** Notwithstanding any law to the contrary, a participating candidate:

1. Shall not accept any contributions, other than a limited number of five-dollar qualifying contributions as specified in section 16-946 and early contributions as specified in section 16-945, except in the emergency situation specified in section 16-954, subsection F.
2. Shall not make expenditures of more than a total of five hundred dollars of the candidate's personal monies for a candidate for the legislature or more than one thousand dollars for a candidate for statewide office.
3. Shall not make expenditures in the primary election period in excess of the adjusted primary election spending limit.
4. Shall not make expenditures in the general election period in excess of the adjusted general election spending limit.
5. Shall comply with section 16-948 regarding campaign accounts and section 16-953 regarding returning unused monies to the citizens clean elections fund described in this article.

**B.** Notwithstanding any law to the contrary, a nonparticipating candidate shall not accept contributions in excess of an amount that is twenty per cent less than the limits specified in section 16-905, subsections A through E, as adjusted by the secretary of state pursuant to section 16-905, subsection H. Any violation of this subsection shall be subject to the civil penalties and procedures set forth in section 16-905, subsections J through M and section 16-924.

**C.** Notwithstanding any law to the contrary, a candidate, whether participating or nonparticipating:
1. If specified in a written agreement signed by the candidate and one or more opposing candidates and filed with the citizens clean elections commission, shall not make any expenditure in the primary or general election period exceeding an agreed-upon amount lower than spending limits otherwise applicable by statute.
2. Shall continue to be bound by all other applicable election and campaign finance statutes and rules, with the exception of those provisions in express or clear conflict with this article.

**D.** Notwithstanding any law to the contrary, any person who makes independent expenditures related to a particular office cumulatively exceeding five hundred dollars in an election cycle, with the exception of any expenditure listed in section 16-920 and any independent expenditure by an organization arising from a communication directly to the organization's members, shareholders, employees, affiliated persons and subscribers, shall file reports with the secretary of state in accordance with section 16-958 so indicating, identifying the office and the candidate or group of candidates whose election or defeat is being advocated and stating whether the person is advocating election or advocating defeat.

**§16-942 Civil Penalties and Forfeiture of Office.**

**A.** The civil penalty for a violation of any contribution or expenditure limit in section 16-941 by or on behalf of a participating candidate shall be ten times the amount by which the expenditures or contributions exceed the applicable limit.

**B.** In addition to any other penalties imposed by law, the civil penalty for a violation by or on behalf of any candidate of any reporting requirement imposed by this chapter shall be one hundred dollars per day for candidates for the legislature and three hundred dollars per day for candidates for statewide office. The penalty imposed by this subsection shall be doubled if the amount not reported for a particular election cycle exceeds ten percent of the adjusted

primary or general election spending limit. No penalty imposed pursuant to this subsection shall exceed twice the amount of expenditures or contributions not reported. The candidate and the candidate's campaign account shall be jointly and severally responsible for any penalty imposed pursuant to this subsection.

**C.** Any campaign finance report filed indicating a violation of section 16-941, subsections A or B or section 16-941, subsection C, paragraph 1 involving an amount in excess of ten percent of the sum of the adjusted primary election spending limit and the adjusted general election spending limit for a particular candidate shall result in disqualification of a candidate or forfeiture of office.

**D.** Any participating candidate adjudged to have committed a knowing violation of section 16-941, subsection A or subsection C, paragraph 1 shall repay from the candidate's personal monies to the fund all monies expended from the candidate's campaign account and shall turn over the candidate's campaign account to the fund.

**E.** All civil penalties collected pursuant to this article shall be deposited into the fund.

**§16-943 Criminal Violations and Penalties.**

**A.** A candidate, or any other person acting on behalf of a candidate, who knowingly violates section 16-941 is guilty of a class 1 misdemeanor.

**B.** Any person who knowingly pays anything of value or any compensation for a qualifying contribution as defined in section 16-946 is guilty of a class 1 misdemeanor.

**C.** Any person who knowingly provides false or incomplete information on a report filed under section 16-958 is guilty of a class 1 misdemeanor.

**§16-944 Repealed**

**§16-945 Limits on Early Contributions.**

**A.** A participating candidate may accept early contributions only from individuals and only during the exploratory period and the qualifying period, subject to the following limitations:

1. Notwithstanding any law to the contrary, no contributor shall give, and no participating candidate shall accept, contributions from a contributor exceeding one hundred dollars during an election cycle.
2. Notwithstanding any law to the contrary, early contributions to a participating candidate from all sources for an election cycle shall not exceed, for a candidate for governor, forty thousand dollars or, for other candidates, ten per cent of the sum of the original primary election spending limit and the original general election spending limit.
3. Qualifying contributions specified in section 16-946 shall not be included in determining whether the limits in this subsection have been exceeded.

**B.** Early contributions specified in subsection A of this section and the candidate's personal monies specified in section 16-941, subsection A, paragraph 2 may be spent only during the exploratory period and the qualifying period. Any early contributions not spent by the end of the qualifying period shall be paid to the fund.

**C.** If a participating candidate has a debt from an election campaign in this state during a previous election cycle in which the candidate was not a participating candidate, then, during the exploratory period only, the candidate may accept, in addition to early contributions specified in subsection A of this section, contributions subject to the limitations in section 16-941, subsection B, or may exceed the limit on personal monies in section 16-941,

subsection A, paragraph 2, provided that such contributions and monies are used solely to retire such debt.

**§16-946 Qualifying Contributions.**

**A.** During the qualifying period, a participating candidate may collect qualifying contributions, which shall be paid to the fund.

**B.** To qualify as a qualifying contribution, a contribution must be:

1. Made by a qualified elector as defined in section 16-121, who at the time of the contribution is registered in the electoral district of the office the candidate is seeking and who has not given another qualifying contribution to that candidate during that election cycle.
2. Made by a person who is not given anything of value in exchange for the qualifying contribution.
3. In the sum of five dollars, exactly.
4. Received unsolicited during the qualifying period or solicited during the qualifying period by a person who is not employed or retained by the candidate and who is not compensated to collect contributions by the candidate or on behalf of the candidate.
5. If made by check or money order, made payable to the candidate's campaign committee, or if in cash, deposited in the candidate's campaign committee's account.
6. Accompanied by a three-part reporting slip that includes the printed name, registration address and signature of the contributor, the name of the candidate for whom the contribution is made, the date, and the printed name and signature of the solicitor. An electronic signature as defined in section 41-351 is deemed to comply with this paragraph.

**C.** A copy of the reporting slip shall be given as a receipt to the contributor, and another copy shall be retained by the candidate's campaign committee. Delivery of an original reporting slip to the secretary of state shall excuse the candidate from disclosure of these contributions on campaign finance reports filed under article 1 of this chapter.

**§16-947 Certification as a participating candidate.**

**A.** A candidate who wishes to be certified as a participating candidate shall file, before the end of the qualifying period, an application with the secretary of state, in a form specified by the citizens clean elections commission.

**B.** The application shall identify the candidate, the office that the candidate plans to seek and the candidate's party, if any, and shall contain the candidate's signature, under oath, certifying that:

1. The candidate has complied with the restrictions of section 16-941, subsection A during the election cycle to date.
2. The candidate's campaign committee and exploratory committee have filed all campaign finance reports required under article 1 of this chapter during the election cycle to date and that they are complete and accurate.
3. The candidate will comply with the requirements of section 16-941, subsection A during the remainder of the election cycle and, specifically, will not accept private contributions.

**C.** The commission shall act on the application within one week. Unless, within that time, the commission denies an application and provides written reasons that all or part of a certification in subsection B of this section is incomplete or untrue, the candidate shall be

certified as a participating candidate. If the commission denies an application for failure to file all complete and accurate campaign finance reports or failure to make the certification in subsection B, paragraph 3 of this section, the candidate may reapply within two weeks of the commission's decision by filing complete and accurate campaign finance reports and another sworn certification.

**D.** A candidate shall be denied certification if that candidate was removed from office by the commission or if the candidate is delinquent in payment of a debt to the commission. If the debt is paid in full or if the candidate is current on a payment agreement with the commission, the candidate may apply for certification as a participating candidate and is eligible to be certified if otherwise qualified by law.

**§16-948 Controls on Participating Candidates' Campaign Accounts.**

**A.** A participating candidate shall conduct all financial activity through a single campaign account of the candidate's campaign committee. A participating candidate shall not make any deposits into the campaign account other than those permitted under sections 16-945 or 16-946.

**B.** A candidate may designate other persons with authority to withdraw funds from the candidate's campaign account. The candidate and any person so designated shall sign a joint statement under oath promising to comply with the requirements of this title.

**C.** The candidate or a person authorized under subsection B of this section shall pay monies from a participating candidate's campaign account directly to the person providing goods or services to the campaign and shall identify, on a report filed pursuant to article 1 of this chapter, the full name and street address of the person and the nature of the goods and services and compensation for which payment has been made. Notwithstanding the previous sentence, a campaign committee may establish one or more petty cash accounts, which in aggregate shall not exceed one thousand dollars at any time. No single expenditure shall be made from a petty cash account exceeding one hundred dollars.

**D.** Monies in a participating candidate's campaign account shall not be used to pay fines or civil penalties, for costs or legal fees related to representation before the commission, or for defense of any enforcement action under this chapter. Nothing in this subsection shall prevent a participating candidate from having a legal defense fund.

**§16-949 Caps on Spending From Citizens Clean Elections Fund**

**A.** The commission shall not spend, on all costs incurred under this article during a particular calendar year, more than five dollars times the number of Arizona resident personal income tax returns filed during the previous calendar year. The commission may exceed this limit during a calendar year, provided that it is offset by an equal reduction of the limit during another calendar year during the same four-year period beginning January 1 immediately after a gubernatorial election.

**B.** The commission may use up to ten per cent of the amount specified in subsection A of this section for reasonable and necessary expenses of administration and enforcement, including the activities specified in section 16-956, subsection A, paragraphs 3 through 7 and subsections B and C. Any portion of the ten per cent not used for this purpose shall remain in the fund.

**C.** The commission may apply up to ten per cent of the amount specified in subsection A of this section for reasonable and necessary expenses associated with public education regarding

participation as a candidate or a contributor, or regarding the functions, purpose and technical aspects of the act. Reasonable and necessary expenditures made pursuant to section 16-956 are not included in this subsection.

**D.** The commission may spend monies in the fund for the reasonable and necessary expenses to implement the act but shall not use monies in the fund to promote the benefits of the clean elections act. Expenditures made pursuant to subsection C of this section or in section 16-956, subsection A are deemed not to constitute promoting the benefits of the clean elections act. Expenditures pursuant to this subsection shall not be included in the limits prescribed in subsection C of this section.

**E.** The state treasurer shall administer a citizens clean elections fund from which costs incurred under this article shall be paid. The auditor general shall review the monies in, payments into and expenditures from the fund no less often than every four years.

**§16-950 Qualification for Clean Elections Funding**

**A.** A candidate who has made an application for certification may also apply, in accordance with subsection B of this section, to receive funds from the citizens clean elections fund, instead of receiving private contributions.

**B.** To receive any clean elections funding, the candidate must present to the secretary of state no later than one week after the end of the qualifying period a list of names of persons who have made qualifying contributions pursuant to section 16-946 on behalf of the candidate. The list shall be divided by county. At the same time, the candidate must tender to the secretary of state the original reporting slips identified in section 16-946, subsection C for persons on the list and an amount equal to the sum of the qualifying contributions collected. The secretary of state shall deposit the amount into the fund.

**C.** The secretary of state shall select at random a sample of five per cent of the number of nonduplicative names on the list for a candidate for a statewide office and twenty per cent of the number of nonduplicative names on the list for a candidate for legislative office and shall forward facsimiles of the selected reporting slips to the county recorders for the counties of the addresses specified in the selected slips. Within ten days, the county recorders shall provide a report to the secretary of state identifying as disqualified any slips that are unsigned or undated or that the recorder is unable to verify as matching a person who is registered to vote in the electoral district of the office the candidate is seeking on the date specified on the slip. The secretary of state shall multiply the number of slips not disqualified by twenty for statewide candidates, and shall multiply the number of slips not disqualified by five for legislative candidates, and if the result is greater than one hundred ten per cent of the quantity required, shall approve the candidate for funds, and if the result is less than one hundred ten per cent of the quantity required, the secretary of state shall forward facsimiles of all of the slips to the county recorders for verification, and the county recorders shall check all slips in accordance with the process above. A county recorder shall not check slips already verified. A county recorder shall report verified totals daily to the secretary of state until a determination is made that a sufficient number of verified slips has been submitted. If a sufficient number of verified slips has been submitted to one or more county recorders, the county recorders may stop the verification process.

**D.** To qualify for clean elections funding, a candidate must have been approved as a participating candidate pursuant to section 16-947 and have obtained the following number[1] of qualifying contributions:

1. For a candidate for legislature, two hundred.
2. For candidate for mine inspector, five hundred.
3. For a candidate for treasurer, superintendent of public instruction, or corporation commission, one thousand five hundred.
4. For a candidate for Secretary of State or attorney general, two thousand five hundred.
5. For a candidate for governor, four thousand.

**E.** To qualify for clean elections funding, a candidate must have met the requirements of this section and either be an independent candidate or meet the following standards:

1. To qualify for funding for a party primary election, a candidate must have properly filed nominating papers and nominating petitions with signatures pursuant to chapter 3, articles 2 and 3 of this title in the primary of a political organization entitled to continued representation on the official ballot in accordance with section 16-804.
2. To qualify for clean elections funding for a general election, a candidate must be a party nominee of such a political organization.

**§16-951 Clean Elections Funding.**

**A.** At the beginning of the primary election period, the commission shall pay from the fund to the campaign account of each candidate who qualifies for clean elections funding:

1. For a candidate who qualifies for clean elections funding for a party primary election, an amount equal to the original primary election spending limit;
2. For an independent candidate who qualifies for clean elections funding, an amount equal to seventy percent of the sum of the original primary election spending limit and the original general election spending limit; or
3. For a qualified participating candidate who is unopposed for an office in that candidate's primary, in the primary of any other party, and by any opposing independent candidate, an amount equal to five dollars times the number of qualifying contributions for that candidate certified by the commission.

**B.** At any time after the first day of January of an election year, any candidate who has met the requirements of section 16-950 may sign and cause to be filed a nomination paper in the form specified by section 16-311, subsection A, with a nominating petition and signatures, instead of filing such papers after the earliest time set for filing specified by that subsection. Upon such filing and verification of the signatures, the commission shall pay the amount specified in subsection A of this section immediately, rather than waiting for the beginning of the primary election period.

**C.** At the beginning of the general election period, the commission shall pay from the fund to the campaign account of each candidate who qualifies for clean elections funding for the general election, except those candidates identified in subsection A, paragraph 2 or subsection D of this section, an amount equal to the original general election spending limit.

**D.** At the beginning of the general election period, the commission shall pay from the fund to the campaign account of a qualified participating candidate who has not received funds

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[1] For 2010, the minimum amounts of qualifying contributions are: 220 for legislature, 4,410 for governor, 2,755 for secretary of state and attorney general, 1,650 for treasurer, superintendent of public instruction and corporation commission, and 550 for mine inspector. See A.A.C R2-20-105(I).

pursuant to subsection A, paragraph 3 of this section and who is unopposed by any other party nominee or any opposing independent candidate an amount equal to five dollars times the number of qualifying contributions for that candidate certified by the commission.

**E.** The special original general election spending limit, for a candidate who has received funds pursuant to subsection A, paragraphs 2 or 3 or subsection D of this section, shall be equal to the amount that the commission is obligated to pay to that candidate.

**§16-952 One-Party-Dominant Legislative District**

Upon applying for clean elections funding pursuant to section 16-950, a participating candidate for the legislature in a one-party-dominant legislative district who is qualified for clean elections funding for the party primary election of the dominant party may choose to reallocate a portion of funds from the general election period to the primary election period. At the beginning of the primary election period, the commission shall pay from the fund to the campaign account of a participating candidate who makes this choice an extra amount equal to fifty per cent of the original primary election spending limit, and the original primary election spending limit for the candidate who makes this choice shall be increased by the extra amount. If a participating candidate who makes this choice becomes qualified for clean elections funding for the general election, the amount the candidate receives at the beginning of the general election period shall be reduced by the extra amount received at the beginning of the primary election period, and the original general election spending limit for that candidate shall be reduced by the extra amount. For the purpose of this subsection, a one-party-dominant legislative district is a district in which the number of registered voters registered in the party with the highest number of registered voters exceeds the number of registered voters registered to each of the other parties by an amount at least as high as ten per cent of the total number of voters registered in the district. The status of a district as a one-party-dominant legislative district shall be determined as of the beginning of the qualifying period.

**16-953. Return of monies to the citizens clean elections fund**

**A.** At the end of the primary election period, a participating candidate who has received monies pursuant to section 16-951, subsection A, paragraph 1 shall return to the fund all monies in the candidate's campaign account above an amount sufficient to pay any unpaid bills for expenditures made during the primary election period and for goods or services directed to the primary election.

**B.** At the end of the general election period, a participating candidate shall return to the fund all monies in the candidate's campaign account above an amount sufficient to pay any unpaid bills for expenditures made before the general election and for goods or services directed to the general election.

**C.** A participating candidate shall pay all uncontested and unpaid bills referenced in this section no later than thirty days after the primary or general election. A participating candidate shall make monthly reports to the commission concerning the status of the dispute over any contested bills. Any monies in a candidate's campaign account after payment of bills shall be returned promptly to the fund.

**D.** If a participating candidate is replaced pursuant to section 16-343, and the replacement candidate files an oath with the secretary of state certifying to section 16-947, subsection B, paragraph 3, the campaign account of the participating candidate shall be transferred to the replacement candidate and the commission shall certify the replacement candidate as a

participating candidate without requiring compliance with section 16-950 or the remainder of section 16-947. If the replacement candidate does not file such an oath, the campaign account shall be liquidated and all remaining monies returned to the fund.

**E.** If a participating candidate who has received monies pursuant to section 16-951, subsection A, paragraph 1 does not qualify for the ballot for the primary election, the participating candidate shall:

1. Return to the fund all monies in the candidate's campaign account above the amount sufficient to pay any unpaid bills for expenditures made before the date the candidate failed to qualify for the primary ballot.
2. Return to the commission, within fourteen days, all remaining assets purchased with public funds in that election cycle, including all political signs. The disqualified participating candidate is not required to return political signs purchased in a previous election cycle.
3. Repay any monies paid to a family member unless the participating candidate demonstrates that the payment made was for goods or services actually provided before disqualification of the candidate and the payment was for fair market value. For the purposes of this paragraph, "family member" means a parent, grandparent, spouse, child or sibling of the candidate or a parent or spouse of any of those persons.

**§16-954 Disposition of Excess Monies.**

**A.** Beginning January 1, 1999, an additional surcharge of ten per cent shall be imposed on all civil and criminal fines and penalties collected pursuant to section 12-116.01 and shall be deposited into the fund.

**B.** At least once per year, the commission shall project the amount of monies that the fund will collect over the next four years and the time such monies shall become available. Whenever the commission determines that the fund contains more monies than the commission determines that it requires to meet current debts plus expected expenses, under the assumption that expected expenses will be at the expenditure limit in section 16-949, subsection A, and taking into account the projections of collections, the commission shall designate such monies as excess monies and so notify the state treasurer, who shall thereupon transfer the excess monies to the general fund.

**C.** At least once per year, the commission shall project the amount of clean elections funding for which all candidates will have qualified pursuant to this article for the following calendar year. By the end of each year, the commission shall announce whether the amount that the commission plans to spend the following year pursuant to section 16-949, subsection A exceeds the projected amount of clean elections funding. If the commission determines that the fund contains insufficient monies or the spending cap would be exceeded were all candidates' accounts to be fully funded, the commission may include in the announcement specifications for decreases in the following parameters, based on the commission's projections of collections and expenses for the fund, including that the fund will provide monies under section 16-951 as a fraction of the amounts there specified.

**D.** If the commission cannot provide participating candidates with all monies specified under sections 16-951 and 16-952, as decreased by any announcement pursuant to subsection C of this section, the commission shall allocate any reductions in payments proportionately among candidates entitled to monies and shall declare an emergency. Upon declaration of an emergency, a participating candidate may accept private contributions to bring the total

monies received by the candidate from the fund and from such private contributions up to the adjusted spending limits, as decreased by any announcement made pursuant to subsection C of this section.

**§16-955 Citizens Clean Election Commission; Structure**

**A.** The citizens clean elections commission is established consisting of five members. No more than two members of the commission shall be members of the same political party. No more than two members of the commission shall be residents of the same county. No one shall be appointed as a member who does not have a registration pursuant to chapter 1 of this title that has been continuously recorded for at least five years immediately preceding appointment with the same political party or as an independent.

**B.** The candidates for vacant commissioner positions shall be persons who are committed to enforcing this article in an honest, independent and impartial fashion and to seeking to uphold public confidence in the integrity of the electoral system. Each candidate shall be a qualified elector who has not, in the previous five years in this state, been appointed to, been elected to or run for any public office, including precinct committeeman, or served as an officer of a political party. [2]

**C.** Initially, the commission on appellate court appointments shall nominate five slates, each having three candidates, before January 1, 1999. No later than February 1, 1999, the governor shall select one candidate from one of the slates to serve on the commission for a term ending January 31, 2004. Next, the highest-ranking official holding a statewide office who is not a member of the same political party as the governor shall select one candidate from another one of the slates to serve on the commission for a term ending January 31, 2003. Next, the second-highest-ranking official holding a statewide office who is a member of the same political party as the governor shall select one candidate from one of the three remaining slates to serve on the commission for a term ending January 31, 2002. Next, the second-highest-ranking official holding a statewide office who is not a member of the same political party as the governor shall select one candidate from one of the two remaining slates to serve on the commission for a term ending January 31, 2001. Finally, the third-highest-ranking official holding a statewide office who is a member of the same political party as the governor shall elect one candidate from the last slate to serve on the commission for a term ending January 31, 2000. For the purposes of this section, the ranking of officials holding statewide office shall be governor, secretary of state, attorney general, treasurer, superintendent of public instruction, corporation commissioners in order of seniority, mine inspector, senate majority and minority leaders and house majority and minority leaders.

**D.** One commissioner shall be appointed for a five-year term beginning February 1 of every year beginning with the year 2000. Before February 1 of each year beginning in the year 2000, the governor and the highest-ranking official holding a statewide office who is not a member of the same political party as the governor shall alternate filling such vacancies. The vacancy in the year 2000 shall be filled by the governor.

**E.** Members of the commission may be removed by the governor, with concurrence of the senate, for substantial neglect of duty, gross misconduct in office, inability to discharge the

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[2] The Arizona Supreme Court held that the Commission on Appellate Court Appointments did not have the authority to nominate Clean Elections Commissioners; members of the Arizona Supreme Court could not appoint Clean Elections Commissioners; and the provisions could be severed from the Act. *Citizens Clean Elections Commissioners v. Myers*, 196 Ariz. 516 (2000).

powers and duties of office or violation of this section, after written notice and opportunity for a response.

**F.** If a commissioner does not complete the commissioner's term of office for any reason, a replacement shall be selected within thirty days after the vacancy occurs. The highest-ranking official holding a statewide office who is a member of the political party of the official who nominated the commissioner who vacated office shall nominate the replacement, who shall serve as commissioner for the unexpired portion of the term. A vacancy or vacancies shall not impair the right of the remaining members to exercise all of the powers of the board.

**G.** Commissioners are eligible to receive compensation in an amount of two hundred dollars for each day on which the commission meets and reimbursement of expenses pursuant to title 38, chapter 4, article 2.

**H.** The commissioners shall elect a chair to serve for each calendar-year period from among their members whose terms expire after the conclusion of that year. Three commissioners shall constitute a quorum.

**I.** A member of the commission shall serve no more than one term and is not eligible for reappointment. No commissioner, during the commissioner's tenure or for three years thereafter, shall seek or hold any other public office, serve as an officer of any political committee or employ or be employed as a lobbyist.

**J.** The commission shall appoint an executive director who shall not be a member of the commission and who shall serve at the pleasure of the commission. The executive director is eligible to receive compensation set by the board within the range determined under section 38-611. The executive director, subject to title 41, chapter 4, articles 5 and 6, shall employ, determine the conditions of employment and specify the duties of administrative, secretarial and clerical employees as the director deems necessary.

**§16-956 Voter Education and Enforcement Duties**

**A.** The commission shall:

1. Develop a procedure for publishing a document or section of a document having a space of predefined size for a message chosen by each candidate. For the document that is delivered before the primary election, the document shall contain the names of every candidate for every statewide and legislative district office in that primary election without regard to whether the candidate is a participating candidate or a nonparticipating candidate. For the document that is delivered before the general election, the document shall contain the names of every candidate for every statewide and legislative district office in that general election without regard to whether the candidate is a participating candidate or a nonparticipating candidate. The commission shall deliver one copy of each document to every household that contains a registered voter. For the document that is delivered before the primary election, the delivery may be made over a period of days but shall be sent in time to be delivered to households before the earliest date for receipt by registered voters of any requested early ballots for the primary election. The commission may deliver the second document over a period of days but shall send the second document in order to be delivered to households before the earliest date for receipt by registered voters of any requested early ballots for the general election. The primary election and general election documents published by the commission shall comply with all of the following:

(a) For any candidate who does not submit a message pursuant to this paragraph, the document shall include with the candidate's listing the words "no statement submitted".
(b) The document shall have printed on its cover the words "citizens clean elections commission voter education guide" and the words "primary election" or "general election" and the applicable year. The document shall also contain at or near the bottom of the document cover in type that is no larger than one-half the size of the type used for "citizens clean elections commission voter education guide" the words "paid for by the citizens clean elections fund".
(c) In order to prevent voter confusion, the document shall be easily distinguishable from the publicity pamphlet that is required to be produced by the secretary of state pursuant to section 19-123.

2. Sponsor debates among candidates, in such manner as determined by the commission. The commission shall require participating candidates to attend and participate in debates and may specify by rule penalties for nonparticipation. The commission shall invite and permit nonparticipating candidates to participate in debates.
3. Prescribe forms for reports, statements, notices and other documents required by this article. The commission shall not require a candidate to use a reporting system other than the reporting system jointly approved by the commission and the office of the secretary of state.
4. Prepare and publish instructions setting forth methods of bookkeeping and preservation of records to facilitate compliance with this article and explaining the duties of persons and committees under this article.
5. Produce a yearly report describing the commission's activities and any recommendations for changes of law, administration or funding amounts and accounting for monies in the fund.
6. Adopt rules to implement the reporting requirements of section 16-958, subsections D and E.
7. Enforce this article, ensure that money from the fund is placed in candidate campaign accounts or otherwise spent as specified in this article and not otherwise, monitor reports filed pursuant to this chapter and financial records of candidates as needed and ensure that money required by this article to be paid to the fund is deposited in the fund. The commission shall not take action on any external complaint that is filed more than ninety days after the postelection report is filed or ninety days after the completion of the canvass of the election to which the complaint relates, whichever is later.

**B.** The commission may subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of any books, papers, records or other items material to the performance of the commission's duties or the exercise of its powers.

**C.** The commission may adopt rules to carry out the purposes of this article and to govern procedures of the commission. Commission rule making is exempt from title 41, chapter 6, article 3. The commission shall propose and adopt rules in public meetings, with at least sixty days allowed for interested parties to comment after the rules are proposed. The commission shall also file a notice of exempt rule making and the proposed rule in the format prescribed in section 41-1022 with the secretary of state's office for publication in the Arizona administrative register. After consideration of the comments received in the sixty day

comment period, the commission may adopt the rule in an open meeting. Any rules given final approval in an open meeting shall be filed in the format prescribed in section 41-1022 with the secretary of state's office for publication in the Arizona administrative register. Any rules adopted by the commission shall only be applied prospectively from the date the rule was adopted.

**D.** Rules adopted by the commission are not effective until January 1 in the year following the adoption of the rule, except that rules adopted by unanimous vote of the commission may be made immediately effective and enforceable.

**E.** If, in the view of the commission, the action of a particular candidate or committee requires immediate change to a commission rule, a unanimous vote of the commission is required. Any rule change made pursuant to this subsection that is enacted with less than a unanimous vote takes effect for the next election cycle.

**F.** Based on the results of the elections in any quadrennial election after 2002, and within six months after such election, the commission may adopt rules changing the number of qualifying contributions required for any office from those listed in section 16-950, subsection D, by no more than twenty per cent of the number applicable for the preceding election.

**§16-957 Enforcement Procedure**

**A.** If the commission finds that there is reason to believe that a person has violated any provision of this article, the commission shall serve on that person an order stating with reasonable particularity the nature of the violation and requiring compliance within fourteen days. During that period, the alleged violator may provide any explanation to the commission, comply with the order, or enter into a public administrative settlement with the commission.

**B.** Upon expiration of the fourteen days, if the commission finds that the alleged violator remains out of compliance, the commission shall make a public finding to that effect and issue an order assessing a civil penalty in accordance with section 16-942, unless the commission publishes findings of fact and conclusions of law expressing good cause for reducing or excusing the penalty. The violator has fourteen days from the date of issuance of the order assessing the penalty to appeal to the superior court as provided in title 12, chapter 7, article 6.

**C.** Any candidate in a particular election contest who believes that any opposing candidate has violated this article for that election may file a complaint with the commission requesting that action be taken pursuant to this section. If the commission fails to make a finding under subsection A of this section within thirty days after the filing of such a complaint, the candidate may bring a civil action in the superior court to impose the civil penalties prescribed in this section.

**§16-958 Manner of Filing Reports**

**A.** Any person who has previously reached the dollar amount specified in section 16-941, subsection D for filing an original report shall file a supplemental report each time previously unreported independent expenditures specified by that subsection exceeds one thousand dollars. Such reports shall be filed at the times specified in subsection B of this section and shall identify the dollar amount being reported, the candidate and the date, and no other detail is required in reports made pursuant to this section.

**B.** Any person who must file an original report pursuant to section 16-941, subsection D or who must file a supplemental report for previously unreported amounts pursuant to subsection A of this section shall file as follows:

1. Before the beginning of the primary election period, the person shall file a report on the first of each month, unless the person has not reached the dollar amount for filing an original or supplemental report on that date.
2. Thereafter, except as stated in paragraph 3 of this subsection, the person shall file a report on any Tuesday by which the person has reached the dollar amount for filing an original or supplemental report.
3. During the last two weeks before the primary election and the last two weeks before the general election, the person shall file a report within one business day of reaching the dollar amount for filing an original or supplemental report.

**C.** Any filing under this article on behalf of a candidate may be made by the candidate's campaign committee. All candidates shall deposit any check received by and intended for the campaign and made payable to the candidate or the candidate's campaign committee, and all cash received by and intended for the campaign, in the candidate's campaign account before the due date of the next report specified in subsection B of this section. No candidate or person acting on behalf of a candidate shall conspire with a donor to postpone delivery of a donation to the campaign for the purpose of postponing the reporting of the donation in any subsequent report.

**D.** The secretary of state shall immediately notify the commission of the filing of each report under this section and deliver a copy of the report to the commission, and the commission shall promptly mail or otherwise deliver a copy of each report filed pursuant to this section to all participating candidates opposing the candidate identified in section 16-941, subsection D.

**E.** Any report filed pursuant to this section or section 16-916, subsection A, paragraph 1 or subsection B shall be filed in electronic format. The secretary of state shall distribute computer software to political committees to accommodate such electronic filing.

**F.** During the primary election period and the general election period, all candidates shall make available for public inspection all bank accounts, campaign finance reports and financial records relating to the candidate's campaign, either by immediate disclosure through electronic means or at the candidate's campaign headquarters, in accordance with rules adopted by the commission.

**§16-959 Inflationary and Other Adjustments of Dollar Values**

A. Every two years, the secretary of state shall modify the dollar values specified in the following parts of this article, in the manner specified by section 16-905, subsection H, to account for inflation: section 16-941, subsection A, paragraph 2 or subsection D; section 16-942, subsection B; section 16-945, subsection A, paragraphs 1 and 2; section 16-948, subsection C; section 16-955, subsection G; and section 16-961, subsections G and H. In addition, the secretary of state shall make a similar inflation adjustment by modifying the dollar values in section 16-949, subsection A to reflect cumulative inflation since the enactment of this article. In addition, every two years, the secretary of state shall change the dollar values in section 16-961, subsections G and H in proportion to the change in the number of Arizona resident personal income tax returns filed during the previous calendar year.

B. Based on the results of the elections in any quadrennial election after 2002, and within six months after such election, the commission may adopt rules in a public meeting reallocating funds available to all candidates between the primary and general elections by selecting a fraction for primary election spending limits that is between one-third and one-half of the spending limits for the election as a whole. For each office, the primary election spending limit shall be modified to be the sum of the primary and general spending limits times the selected fraction, and the general election spending limit shall be modified to be the same sum times one less the selected fraction.

**§16-960 Severability**

If a provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable. In any court challenge to the validity of this article, the commission and Arizonans for clean elections shall have standing to intervene.

**§16-961 Definitions**

**A.** The terms "candidate's campaign committee," "contribution," "expenditures," "exploratory committee," "independent expenditure," "personal monies," "political committee" and "statewide office" are defined in section 16-901.

**B.** 1. "Election cycle" means the period between successive general elections for a particular office.

2. "Exploratory period" means the period beginning on the day after a general election and ending the day before the start of the qualifying period.

3. "Qualifying period" means the period beginning on the first day of August in a year preceding an election and ending one week before the primary election.

4. "Primary election period" means the nine-week period ending on the day of the primary election.

5. "General election period" means the period beginning on the day after the primary election and ending on the day of the general election.

6. For any recall election, the qualifying period shall begin when the election is called and last for thirty days, there shall be no primary election period and the general election period shall extend from the day after the end of the qualifying period to the day of the recall election. For recall elections, any reference to "general election" in this article shall be treated as if referring to the recall election.

**C.** 1. "Participating candidate" means a candidate who becomes certified as a participating candidate pursuant to section 16-947.

2. "Nonparticipating candidate" means a candidate who does not become certified as a participating candidate pursuant to section 16-947.

3. Any limitation of this article that is applicable to a participating candidate or a nonparticipating candidate shall also apply to that candidate's campaign committee or exploratory committee.

D. "Commission" means the citizens clean elections commission established pursuant to section 16-955.

**E.** "Fund" means the citizens clean elections fund defined by this article.

**F.** 1. "Party nominee" means a person who has been nominated by a political party pursuant to section 16-301 or 16-343.

2. "Independent candidate" means a candidate who has properly filed nominating papers and nominating petitions with signatures pursuant to section 16-341.

3. "Unopposed" means with reference to an election for:

(a) A member of the house of representatives, opposed by no more than one other candidate who has qualified for the ballot and who is running in the same district.

(b) A member of the corporation commission, opposed by a number of candidates who have qualified for the ballot that is fewer than the number of corporation commission seats open at that election and for which the term of office ends on the same date.

(c) All other offices, opposed by no other candidate who has qualified for the ballot and who is running in that district or running for that same office and term.

**G.** "Primary election spending limits" means:

1. For a candidate for the legislature, twelve thousand nine hundred twenty-one dollars. [3]
2. For a candidate for mine inspector, forty-one thousand three hundred forty-nine dollars.
3. For a candidate for treasurer, superintendent of public instruction or the corporation commission, eighty-two thousand six hundred eighty dollars.
4. For a candidate for secretary of state or attorney general, one hundred sixty-five thousand three hundred seventy-eight dollars.
5. For a candidate for governor, six hundred thirty-eight thousand two hundred twenty-two dollars.

**H.** "General election spending limits" means amounts fifty per cent greater than the amounts specified in subsection G of this section.

**I.** 1. "Original" spending limit means a limit specified in subsections G and H of this section, as adjusted pursuant to section 16-959, or a special amount expressly set for a particular candidate by a provision of this title.

2. "Adjusted" spending limit means an original spending limit as further adjusted pursuant to section 16-952.

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[3] For 2010, the primary adjusted amounts are: $707,447 for governor, $183,311 for secretary of state and attorney general, $91,645 for treasurer, superintendent of public instruction and corporation commissioner, $45,838 for mine inspector and $14,319 for legislature.

[5] General adjusted amounts are: $1,061,171 for governor, $273,697 for secretary of state and attorney general, $137,468 for treasurer, superintendent of public instruction and corporation commissioner, $68,757 for mine inspector and $21,479 for legislature.

**E-1**

**ARIZONA STATE RETIREMENT SYSTEM (R-16-0101)**
Title 2, Chapter 8, Article 1, Retirement System; Defined Benefit Plan

Amend: R2-8-115; R2-8-118; R2-8-122; R2-8-126

**GOVERNOR'S REGULATORY REVIEW COUNCIL**
**M E M O R A N D U M**

**MEETING DATE: January 5, 2016** **AGENDA ITEM: E-1**

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**TO:** Members of the Governor's Regulatory Review Council

**FROM:** Kara Kerker, Staff Attorney

**DATE :** December 18, 2015

**SUBJECT:** **ARIZONA STATE RETIREMENT SYSTEM (R-16-0101)**
Title 2, Chapter 8, Article 1, Retirement System; Defined Benefit Plan

Amend: R2-8-115; R2-8-118; R2-8-122; R2-8-126

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## General Comments

### Purpose of the Agency and Summary of What the Rulemaking Does

The Arizona State Retirement System (ASRS) was established by A.R.S. Title 38, Public Officers and Employees, Chapter 5, Social Security and Retirement, Article 2, Arizona State Retirement System (Article 2). The ASRS Board (Board) "is responsible for supervising the administration of [Article 2] by the director [Director] of ASRS." A.R.S. §§ 38-714(B) and 38-715(C)(1). The purpose of the ASRS and the Director is "to manage and invest employee and employer contributions and assets and distribute retirement and long-term disability benefits to retired members of the system and plan." Laws 2006, Ch. 125 § 5(A).

The ASRS is amending four existing rules in 2 A.A.C. 8, Article 1 for clarity, conciseness, and to provide greater ease of use by both employers and members.

### Article Contents, Including the Subject Matter of Each Rule Affected

Article 1 contains seven rules, four of which are affected by this rulemaking. R2-8-115 addresses return of contributions upon termination of membership by separation from all ASRS employment by other than retirement or death and payment of survivor benefits upon the death of a member, R2-8-118 addresses application of interest rates, R2-8-122 addresses remittance of contributions, and R2-8-126 addresses calculating benefits.

### Year that Each Rule was Last Amended or Newly Made

Rules 115, 118, and 126 were last amended on December 5, 2015. Rule 122 was last amended on December 8, 1978.

**Proposed Action**

The ASRS is amending Rule 115 to state that upon a member's request to withdraw, the ASRS will provide the member with an application for withdrawal and the employer with an Ending Payroll Verification form. The ASRS is also amending the rule by adding a new subsection (E) to allow the ASRS to require a copy of a government issued ID to verify the identity of a withdrawing member who has been inactive for 5+ years and has $1,000+ on their account balance. Additionally, the ASRS is requiring that each ASRS employer, not member, complete the Ending Payroll Verification – Withdrawal of Contributions and Termination of Membership form electronically. Finally, the ASRS is removing unnecessary language from the rule and renumbering subsections based on the above changes.

The ASRS is amending Rule 118 by clarifying that "voluntary additional contributions" refers to contributions that are made pursuant to A.R.S. §§ 38-742, 38-743, 38-744, and 38-745.

The ASRS is amend Rule 122 by changing "Arizona State Retirement System" to its acronym "ASRS" for consistency with other rules and removing the unnecessary use of the phrase "without limitation" throughout the rule.

The ASRS is amending Rule 126 by clarifying the annuity options for which each age group is eligible. This involves amending subsections (B), (C), and (D) and adding subsection (I) to allow a member who is 10 or more years older than the member's ex-spouse contingent annuitant to be eligible to participate in a 100% joint-and-survivor option under certain conditions and subsection (J) to allow a member who is 24 or more years older than the member's ex-spouse contingent annuitant to be eligible to participate in a 66 2/3% joint-and-survivor option under certain conditions.

**Summary of Reasons for the Proposed Action**

The ASRS indicates that the proposed amendments will clarify the rule language, reducing the regulatory burden imposed on the public. Amending R2-8-115 to require ID verification as indicated will prevent potential fraud against the agency by ensuring that the correct person is requesting withdrawal of an inactive member's account. The ASRS indicates that this rulemaking will help the ASRS control and mitigate possible delays associated with a withdrawal of an inactive member's account, resulting in more efficient operation and administration of the ASRS.

**Exemption or Request and Approval for Exception from the Moratorium**

The Governor's Office provided the ASRS with an exception from Executive Order 2015-01 on August 12, 2015.

**Substantive or Procedural Concerns**

None.

**1. Are the rules legal, consistent with legislative intent, and within the agency's statutory authority?**

Yes. The ASRS provides general statutory authority for the rules. Under A.R.S. § 38-714(E)(4), the ASRS "may [a]dopt, amend or repeal rules for the administration of the plan, this article [Article 2, Arizona State Retirement System] and articles 2.1 and 7 of this chapter [Chapter 5, Social Security and Retirement]." A.R.S. § 38-720 requires the ASRS to establish an ASRS depository that is separate from other public monies or funds and requires the ASRS to place all monies that come into its custody from any source in the ASRS depository.

The ASRS cites to A.R.S. §§ 38-736 and 38-737 as general authority requiring contributions by members as a condition of employment made by payroll deductions and by employers as a percentage of compensation of all employees of the employers determined the preceding fiscal year. Additionally, the ASRS cites to A.R.S. § 38-735, which requires all monies from members and employers pursuant to A.R.S. §§ 38-736 and 38-737 to be deposited in the ASRS depository.

The ASRS cites to A.R.S. § 38-740 as specific authority that allows a member who leaves employment other than by retirement or death to elect to receive a return of the contributions. A.R.S. § 38-740 goes on to outline the amount a member may receive depending on their years of employment and allows a member to withdraw the interest that has accumulated on their contributions.

The ASRS cites to A.R.S. § 38-762, which outlines payment to the designated beneficiary of the member upon the death of any active or inactive member before retirement. The designated beneficiary "shall be paid a survivor benefit equal to the sum of both . . . [t]he member's contribution and interest and the employer's contribution and interest to the defined benefit plan established by this article for credited service that a member earned by working for an employer, plus all contributions and interest made for the purchase of military service, leave without pay or other public service credit, and [t]he amount of the member's employee account and the member's employer account together with supplemental credits, if any, transferred from the defined contribution program administered by ASRS to the defined benefit program established by this article."

The ASRS cites to A.R.S. § 38-764, which outlines the options for payment of retirement benefits once a member elects to commence retirement. Additionally, the ASRS cites to A.R.S. § 38-769, which outlines the maximum retirement benefits that can be paid to a member annually, subject to certain internal revenue code limitations.

The ASRS cites to A.R.S. § 38-771.01, which outlines the situations for alternative benefits for transferred defined contribution program members. Subsection (N) allows the ASRS to "administer and interpret this section in order to prevent any duplication of benefits provided

by ASRS and the defined contribution program administered by ASRS and to provide all eligible members and beneficiaries with the benefits they are entitled to under the laws of this state."

Finally, the ASRS cites to A.R.S. § 38-774, which requires the creation of a separate unfunded governmental excess benefit arrangement that is established outside of and apart from the trust fund established by section 38-712 to pay members benefits that are otherwise payable by ASRS and that exceed the limitations on benefits imposed by section 415 of the internal revenue code. The ASRS shall administer this excess benefit arrangement as a qualified governmental excess benefit arrangement pursuant to section 415(m) of the internal revenue code. Additionally, A.R.S. § 38-774 grants the ASRS authority to adopt rules to implement A.R.S. § 38-774.

**2. Are the rules written in a manner that is clear, concise, and understandable to the general public?**

Yes, the rules are written in a clear, concise, and understandable manner.

**3. Does the agency adequately address the comments on the proposed rules and any supplemental proposals?**

Yes. The ASRS indicates that it received no public or stakeholder comments about the rulemaking. No one attended the oral proceeding on November 10, 2015.

**4. Are the final rules a substantial change, considered as a whole, from the proposed rules and any supplemental proposals?**

No. In the proposed rules, the ASRS planned to remove the definition of "process date" from R2-8-115. However, the ASRS chose not to remove the definition of "process date" because that term is still used in subsections (D)(7)(d) and (F) of the rule. After review, staff does not consider this a substantial substantive change from the proposed rules.

**5. Does the preamble disclose a reference to any study relevant to the rules that the agency reviewed and either did or did not rely on in the agency's evaluation of or justification for the rules?**

No. The ASRS indicates that no study was reviewed or relied upon for this rulemaking.

**6. Are the rules more stringent than corresponding federal law and, if so, is there statutory authority that allows the agency to exceed the requirements of federal law?**

No. The ASRS indicates that federal laws apply to retirement programs in general; however, no federal laws specifically correspond to this rulemaking.

**7. Do the rules require a permit or license and if so, does the agency use a general permit or is any exception applicable under A.R.S. § 41-1037?**

No. The ASRS indicates that the rules do not require a permit or license.

**8. Do the rules establish a new fee or contain a fee increase?**

No. The rules do not establish a new fee or contain a fee increase.

**9. Conclusion**

The ASRS proposes the rules become effective 60 days after filing with the Office of the Secretary of State.

This analyst recommends that the rules be approved.

**GOVERNOR'S REGULATORY REVIEW COUNCIL**
**M E M O R A N D U M**

**MEETING DATE: January 5, 2016** **AGENDA ITEM: E-1**

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**TO:** Members of the Governor's Regulatory Review Council

**FROM:** GRRC Economist

**DATE :** December 18, 2015

**SUBJECT:** **ARIZONA STATE RETIREMENT SYSTEM (R-16-0101)**
Title 2, Chapter 8, Article 1, Retirement System; Defined Benefit Plan

Amend: R2-8-115; R2-8-118; R2-8-122; R2-8-126

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I reviewed the economic, small business, and consumer impact statement (hereafter referred to as EIS) and make the following comments. These comments are made to assist the Council in its review and may be used as the Council determines.

**GRRC Economist comments:**

The amendments reviewed by the ASRS are generally intended to add clarifying language without introducing substantive changes to the rules requirements. One exception is the amendment to R2-8-115, which will require a member who has been inactive for 5+ years and has $1000+ on their account balance, to show proof of identity by providing a government issued ID. This measure will help prevent fraudulent withdrawal of an inactive ASRS member account. The ASRS indicates that there were 2 instances where inactive member accounts were improperly withdrawn in the last 5 years.

The amendments to R2-8-126 are intended to add additional specificity in listing a contingent annuitant for a particular subset of members (i.e., divorced members who are ten years, or more, older than an ex-spouse and who list the ex-spouse as a contingent annuitant). At the end of FY 2015, there were approximately 23,600 members with a joint and survivor annuity option who had a contingent annuitant. Of those members, approximately 9,600 are 10 years, or more, older than their contingent annuitant.

The proposed amendments to R2-8-126 add clarity to listing an ex-spouse as a contingent annuitant, which will benefit divorced ASRS members who will be able to divide their marital assets with more flexibility and certainty. The ASRS anticipates that a greater percentage of

members will be listing an ex-spouse in the future as more members become divorced. The ASRS current total membership is approximately 549,000.

The ASRS has certified that the Joint Legislative Budget Committee has not been notified because the number of new full-time employees (FTEs) necessary to implement and enforce the rule is zero. Notice of new FTEs is required by A.R.S. § 41-1055(B)(3)(a).

1. **Costs and Benefits for:**

**a. The implementing agency:**

The proposed rule amendments will not result in increased costs or a specific benefit to the implementing agency.

**b. Political subdivisions:**

The proposed rule revisions do not directly affect political subdivisions.

**c. Businesses:**

The proposed rule revisions do not directly affect businesses.

**d. Small businesses:**

The proposed rule revisions do not directly affect small businesses.

**e. Consumers directly affected by the rulemaking:**

ASRS members will benefit from the additional clarity and specificity added with the proposed rule amendments. In addition, the proposed amendment to R2-8-115 requiring identity verification will benefit individual members by adding safeguards to prevent improper withdrawal of their account and will benefit all ASRS members by protecting the retirement fund. For example, if 17% of all refunds were made improperly, it would result in a material impact to the fund, which ultimately can result in increased contribution rates for current employees.

**2. Do the probable benefits outweigh the probable costs?**

Based on the information provided, the Board indicates that the benefit to amending the four rules in Article 1 outweigh the probable cost. As discussed above, the rule amendments reduce the regulatory burden by adding additional clarity with the exception being the requirement to show an ID before withdrawal of funds from an inactive member's account. However, the benefit to individual members, and the fund in general, outweigh the additional requirement to provide an ID.

**3. Analysis of methods to reduce the small business impact:**

No businesses subjected to ASRS rules, including the proposed rule amendments.

**4. The probable effect on state revenues:**

The ASRS anticipates the proposed rule amendments will have no impact on state revenues.

**5. Analysis of any less intrusive or less costly alternative methods:**

The ASRS did not consider other alternatives because the proposed rule amendments represent the most cost effective and efficient method of complying with state statute.

**6. Whether an analysis was submitted to the agency regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states:**

No analysis was submitted that compares the rules' impact of the competiveness of businesses in this state to the impact on businesses in other states.

**7. A description of any data on which a rule is based with an explanation of how the data was obtained and why the data is acceptable data, and the methods used by the agency to evaluate the costs and benefits in the EIS.**

The ASRS indicates that no outside data or studies were used in the development of the proposed rule amendments.

**8. Conclusion:**

The submitted EIS is generally accurate, and contains the information required for compliance with A.R.S. §§ 41-1035, 41-1052(D)(1-3), and 41-1055. This analyst recommends that the rule amendments be approved.

# ARIZONA STATE RETIREMENT SYSTEM

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*Paul Matson*
*Director*


December 18, 2015

Ms. Nicole A. Ong, Chair
The Governor's Regulatory Review Council
100 North 15th Avenue, Ste. 402
Phoenix, AZ 85007

**Re: A.A.C. Title 2. Administration**
**Chapter 8. State Retirement System Board**

Dear Ms. Ong:

The attached final rule package is submitted for review and approval by the Council. The following information is provided for Council's use in reviewing the rule package:

1. Close of record date: The rulemaking record was closed on November 10, 2015, following a period for public comment and an oral proceeding.

2. Relation of the rulemaking to a five-year-review report: This rulemaking relates to a five-year-review report approved by Council on August 4, 2015.

3. New fee or fee increase: This rulemaking does not establish a new fee or increase an existing fee.

4. Immediate effective date: An immediate effective date is not requested.

5. Certification regarding studies: I certify that the Board did not rely on any studies for this rulemaking.

8. Certification that the preparer of the EIS notified the JLBC of the number of new full-time employees necessary to implement and enforce the rule: I certify that the rule in this rulemaking will not require a state agency to employ a new full-time employee. No notification was provided to JLBC.

9. List of documents enclosed:
    a. Cover letter signed by the Board's Assistant Director;
    b. Notice of Final Rulemaking including the preamble, table of contents for the rulemaking, and rule text; and
    c. Economic, Small Business, and Consumer Impact Statement.

Sincerely,

Patrick M. Klein
Assistant Director

**NOTICE OF FINAL RULEMAKING**

**TITLE 2. ADMINISTRATION**

**CHAPTER 8. STATE RETIREMENT SYSTEM BOARD**

**PREAMBLE**

| **1. Articles, Parts, and Sections Affected** | **Rulemaking Action** |
|---|---|
| R2-8-115 | Amend |
| R2-8-118 | Amend |
| R2-8-122 | Amend |
| R2-8-126 | Amend |

**2. Citations to the agency's statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):**

Authorizing statute: A.R.S. § 38-714(E)(4)

Implementing statutes: A.R.S. §§ 38-711, 38-720, 38-735, 38-736, 38-737, 38-740, 38-762, 38-764, 38-769, 38-771, 38-771.01, 38-774

**3. The effective date for the rules:**

As specified under A.R.S. § 41-1032(A), the rule will be effective 60 days after the rule package is filed with the Office of the Secretary of State.

**a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):**

Not applicable.

**b. If the agency selected a date later than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):**

Not applicable.

**4. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:**

Notice of Rulemaking Docket Opening: 21 A.A.R. 1834, September 11, 2015

Notice of Proposed Rulemaking: 21 A.A.R. 2281, October 9, 2015

**5. The agency's contact person who can answer questions about the rulemaking:**


Name: Jessica A. Ross, Rules Writer
Address: Arizona State Retirement System
3300 N. Central Ave., Ste. 1400
Phoenix, AZ 85012-0250
Telephone: (602) 240-2039
E-Mail: JessicaR@azasrs.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:**

The ASRS needs to clarify approximately four (4) rules within Article 1. R2-8-115 needs to reflect that Ending Payroll Verification must be completed electronically by the employer. The rule also needs to state that the ASRS may require a copy of a government issued ID to verify the identity of a withdrawing member who has been inactive for 5+ years and has $1,000+ on their account balance. R2-8-118 needs to be amended to clarify that "voluntary additional contributions" refers to contributions that are made pursuant to a service purchase, reinstatement, etc. R2-8-122 needs to be amended to be more concise by referring to the ASRS by the agency acronym and by removing unnecessary language such as "without limitation." The ASRS needs to amend R2-8-126 subsections (B), (C), and (D) to better clarify for which annuity options each age group is eligible.

With the exception of the ID addition to R2-8-115, the amendments outlined above will clarify the rule language without substantively changing the rules' requirements, thereby reducing the regulatory burden imposed on the public. Amending R2-8-115 to require ID verification as indicated will prevent potential fraud against the agency by ensuring that the correct person is requesting withdrawal of an inactive member's account. This rulemaking will help the ASRS control and mitigate possible delays associated with a withdrawal of an inactive member's account, resulting in the more efficient operation and administration of the ASRS.

**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:**

No study was reviewed.

**8. 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.

**9. A summary of the economic, small business, and consumer impact:**

There is little to no economic, small business, or consumer impact, other than the minimal cost to the ASRS to prepare the rule package. The rules will have minimal economic impact, if any, because the rulemaking simply clarifies requirements that the ASRS enforces in rule already. There may be some additional cost to some members who must provide documentation to verify their identity when specific criteria are present as mentioned above. However, those costs should be minimal because the ASRS will accept a copy of any government issued ID for such verification purposes.

**10. A description of any changes between the proposed rulemaking, including supplemental notices, and the final rulemaking:**

The ASRS chose not to remove the definition of "process date" from R2-8-115 because that term is still used in subsections (D)(7)(d) and (F) of the rule.

**11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:**

The ASRS received no written comments regarding the rulemaking. No one attended the oral proceeding on November 10, 2015.

**12. All agencies shall list any 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:**

The rules do not require a permit.

**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:**

Federal law applies to retirement programs. However, there is no federal law specifically applicable to this rulemaking.

**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:**

No analysis was submitted.

**13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rule:**

No materials are incorporated by reference.

**14. Whether the rule was previously made, amended, or repealed as an emergency rule. If so, cite the notice published in the *Register* as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:**

Not applicable.

**15. The full text of the rules follows:**

## TITLE 2. ADMINISTRATION

## CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

## ARTICLE 1. RETIREMENT SYSTEM; DEFINED BENEFIT PLAN

Section

R2-8-115. Return of Contributions Upon Termination of Membership by Separation from All ASRS Employment by Other Than Retirement or Death; Payment of Survivor Benefits Upon the Death of a Member

R2-8-118. Application of Interest Rates

R2-8-122. Remittance of contributions

R2-8-126. Calculating Benefits

## ARTICLE 1. RETIREMENT SYSTEM; DEFINED BENEFIT PLAN

**R2-8-115. Return of Contributions Upon Termination of Membership by Separation from All ASRS Employment by Other Than Retirement or Death; Payment of Survivor Benefits Upon the Death of a Member**

A. The following definitions apply to this Section unless otherwise specified:

1. "Acceptable documentation" means any ASRS form request containing all the accurate, required information, dates, and signatures necessary to process the form request.
2. "Eligible retirement plan" means the same as in A.R.S. § 38-770(D)(3).
3. "Employer number" means a unique identifier the ASRS assigns to a member employer.
4. "Employer plan" means the types of eligible retirement plans specified in A.R.S. § 38-770(D)(3)(c), (d), (e), and (f).
5. "Process date" means the calendar day the ASRS generates contribution withdrawal documents to be sent to a member.
6. "Warrant" means a voucher authorizing payment of funds due to a member.

B. No change

C. Upon ~~receipt of the~~ request to withdraw by the member, the ASRS shall provide ~~the member with~~:

1. An Application for Withdrawal of Contributions and Termination of Membership form to the member, and
2. An Ending Payroll Verification - Withdrawal of Contribution and Termination of Membership form~~, and~~ to the employer.
3. ~~The process date.~~

D. The member shall complete and return to the ASRS the Application for Withdrawal of Contributions and Termination of Membership form that includes the following information:

1. The member's full name;
2. The member's Social Security number;
3. The member's current mailing address;

4. The member's daytime telephone number, if applicable;

5. The member's birth date;

6. The date of termination;

7. Dated signature of the member certifying that the member:

   a. Is no longer employed by any ASRS employer;

   b. Is neither under contract nor has any verbal or written agreement for future employment with an ASRS employer;

   c. Is not currently in a leave of absence status with an ASRS employer;

   d. Understands that each of the member's former ASRS employers~~'~~ ~~payroll departments~~ will complete a payroll verification form if payroll transactions occurred with the ASRS employer within the six months before the process date;

   e. Has read and understands the Special Tax Notice Regarding Plan Payments the member received with the application;

   f. Understands that the member is forfeiting all future retirement rights and privileges of membership with the ASRS;

   g. Understands that long-term disability benefits will be canceled if the member elects to withdraw contributions while receiving or electing to receive long-term disability benefits;

   h. Understands that if the member elects to roll over all or any portion of the member's distribution to another employer plan, it is the member's responsibility to verify that the receiving employer plan will accept the rollover and, if applicable, agree to separately account for the pre-tax and post-tax amounts rolled over and the related subsequent earnings on the amounts;

   i. Understands that if the member elects to roll over all or any portion of the member's distribution to an individual retirement account, it is the member's responsibility to separately account for pre-tax and post-tax amounts; and

j. Understands that if the member elects a rollover to another employer plan or individual retirement account, any portion of the distribution not designated for rollover will be paid directly to the member and any taxable amounts will be subject to 20% federal income tax withholding and 5% state tax withholding;

8. Specify that:

a. The entire amount of the distribution be paid directly to the member,

b. The entire amount of the distribution be transferred to an eligible retirement plan, or

c. An identified amount of the distribution be transferred to an eligible retirement plan and the remaining amount be paid directly to the member; and

9. If the member selects all or a portion of the withdrawal be paid to an eligible retirement plan, specify;

a. The type of eligible retirement plan;

b. The eligible retirement plan account number, if applicable; and

c. The name and mailing address of the eligible retirement plan.

E. If the member requesting the withdrawal has been inactive for five years or more, and if the member's account balance is $1,000 or more, the member requesting the withdrawal shall provide a copy of a driver license or a form of other government issued identification to the ASRS.

~~E.~~F. If a payroll transaction for the member occurred with any ASRS employer within six months before the process date ~~the member~~ each ASRS employer shall complete ~~and return to the ASRS~~ an Ending Payroll Verification - Withdrawal of Contributions and Termination of Membership form ~~for each ASRS employer~~ electronically that includes the following information:

1. ~~Filled out by the member:~~

~~a.~~ The member's full name~~, and~~;

~~b.~~2. The member's Social Security number; ~~and~~

~~2. Filled out by each ASRS employer:~~

~~a.~~3. The member's termination date~~,~~;

~~b.~~4. The member's final pay period ending date;

~~c.~~5. The final amount of contributions, including any adjustments or corrections, but not including any long-term disability contributions~~,~~;

~~d.~~6. The ASRS employer's name and telephone number;

~~e.~~7. The employer number;

~~f.~~8. The name and title of the authorized employer representative;

~~g.~~9. Certification by the authorized employer representative that:

~~i.~~a. The member terminated employment and is neither under contract nor bound by any verbal or written agreement for employment with the employer;

~~ii.~~b. There is no agreement to re-employ the member; and

~~iii.~~c. The authorized employer representative has the legal power to bind the employer in transactions with the ASRS; and

~~h.~~10. The signature of the authorized employer representative and date of signature.

~~F.~~G. If the member requests a return of contributions and a warrant is distributed during the fiscal year that the member began membership in the ASRS, no interest is paid to the account of the member.

~~G.~~H. If the member requests a return of contributions after the first fiscal year of membership, the ASRS shall credit interest at the rate specified in Column 3 of the table in R2-8-118(A) to the account of the member as of June 30 of each year, on the basis of the balance in the account of the member as of the previous June 30. The ASRS shall credit interest for a partial fiscal year of membership in the ASRS on the previous June 30 balance based on the number of days of membership up to and including the day the ASRS issues the warrant divided by the total number days in the fiscal year. Contributions made after the previous June 30 are returned without interest.

~~H.~~I. Upon submitting to the ASRS the completed and accurate Application for Withdrawal of Contributions and Termination of Membership form and, if applicable, after the ASRS has received

any Ending Payroll Verification - Withdrawal of Contributions and Termination of Membership forms, a member is entitled to payment of the amount due to the member as specified in subsection ~~(F)~~(G) or ~~(G)~~(H) unless a present or former spouse submits to the ASRS a domestic relations order that specifies entitlement to all or part of the return of contributions under A.R.S. § 38-773 before the ASRS returns the contributions as specified by the member.

~~I.~~J. Upon the death of a member, the ASRS shall distribute the survivor benefits according to the most recent, acceptable documentation that is on file with the ASRS that was received prior to the date of the member's death, unless otherwise provided by law.

~~J.~~K. If there is no designation of beneficiary or if the designated beneficiary predeceases the member, the survivor benefit is paid as specified in A.R.S. § 38-762(E). The designated beneficiary or other person specified in A.R.S. § 38-762(E) shall:

1. Provide a certified copy of a death certificate or a certified copy of a court order that establishes the member's death;
2. Provide a certified copy of the court order of appointment as administrator, if applicable; and
3. Except if the deceased member was retired and elected the joint and survivor option, complete and have notarized an application for survivor benefits, provided by the ASRS, that includes:
    a. The deceased member's full name,
    b. The deceased member's Social Security number,
    c. The following, as it pertains to the designated beneficiary or other person specified in A.R.S. § 38-762(F):
        i. Full name;
        ii. Mailing address;
        iii. Contact telephone number;
        iv. Date of birth, if applicable; and

v. Social Security number or Tax ID number, if applicable.

**R2-8-118. Application of Interest Rates**

A. No change

B. At the beginning of each fiscal year, interest is credited to the retirement account of each member on the June 30 that marks the end of the fiscal year based on the balance in the member's account as of the previous June 30. The balance on which interest is credited includes:

1. Employer and employee contributions;
2. Voluntary additional contributions made by members pursuant to A.R.S. §§ 38-742, 38-743, 38-744, and 38-745, if applicable;
3. Amounts credited by transfer under A.R.S. § 38-924; and
4. Interest credited in previous years.

**R2-8-122. Remittance of contributions**

A. Remittance of employee member contributions: Each state department and employer member of the ~~Arizona State Retirement System~~ ASRS, including, ~~without limitation,~~ any county, municipality or political subdivision, shall certify on each payroll the amount to be contributed by each one of their employee members of the ~~Arizona State Retirement System~~ ASRS and shall remit the amount of employee member contributions to the ~~Arizona State Retirement System~~ ASRS, together with such detailed report as may be required by the ~~System~~ ASRS to identify the individual owner of each such member contribution, not later than 14 calendar days after the last day of each payroll period. Payments of employee member contributions not received in the offices of the ~~Arizona State Retirement System~~ ASRS by the 14th calendar day after the last day of the applicable payroll period shall become delinquent after that date and shall be increased, by interest at the rate of eight percent per annum from and after the date of delinquency until payment is received by the ~~Arizona State Retirement System~~ ASRS.

B. Remittance of employer contributions: Each state department and employer member of the ~~Arizona State Retirement System~~ ASRS, including, ~~without limitation,~~ any county, municipality or political subdivision, shall remit the amount of employer contributions to the ~~Arizona State Retirement System~~ ASRS not later than 14 calendar days after the last day of each payroll period. Payments of employer contributions not received in the offices of the ~~Arizona State Retirement System~~ ASRS by the 14th calendar day after the last day of the applicable payroll period shall become delinquent after that date and shall be increased, by interest at the rate of eight percent per annum from and after the date of delinquency until payment is received by the ~~Arizona State Retirement System~~ ASRS.

**R2-8-126. Calculating Benefits**

A. No change

B. An individual who is 104 years of age or older at the time of retirement ~~and who elects a life annuity~~ is not eligible to select ~~the~~ an option of ~~income for five years certain and for life thereafter.~~ life annuity with a term certain.

C. An individual who is 93 years of age or older at the time of retirement ~~and who elects a life annuity~~ is not eligible to select the options of ~~income for~~ life annuity with ten years certain ~~and~~ or life annuity with 15 years certain. ~~for life thereafter.~~

D. An individual who is 85 years of age or older at the time of retirement ~~and who elects a life annuity~~ is not eligible to select the option of ~~income for~~ life annuity with 15 years certain ~~and for life thereafter~~.

E. No change

F. No change

G. No change

H. No change

I. Notwithstanding subsection (H), a member who is ten or more years older than the member's ex-spouse contingent annuitant is eligible to participate in a 100% joint-and-survivor option, if:

1. The member selected the ex-spouse as the contingent annuitant prior to divorce from the ex-spouse; and

2. The member submits a DRO to the ASRS which requires the ex-spouse to be the contingent annuitant on the member's account.

J. Notwithstanding subsection (H), a member who is 24 or more years older than the member's ex-spouse contingent annuitant is eligible to participate in a 66 2/3% joint-and-survivor option, if:

1. The member selected the ex-spouse as the contingent annuitant prior to divorce from the ex-spouse; and

2. The member submits a DRO to the ASRS which requires the ex-spouse to be the contingent annuitant on the member's account.

**ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT[1]**

**TITLE 2. ADMINISTRATION**

**CHAPTER 8. STATE RETIREMENT SYSTEM BOARD**

1. Identification of the rulemaking:

   The ASRS needs to clarify approximately four (4) rules within Article 1. R2-8-115 needs to reflect that Ending Payroll Verification may be completed electronically by the employer. The rule also needs to state that the ASRS may require a copy of a government issued ID to verify the identity of a withdrawing member who has been inactive for five or more years and has $1,000 or more on their account balance. R2-8-118 needs to be amended to clarify that "voluntary additional contributions" refers to contributions that are made pursuant to a service purchase, reinstatement, etc. R2-8-122 needs to be amended to be more concise by referring to the ASRS by the agency acronym and by removing unnecessary language such as "without limitation." The ASRS needs to amend R2-8-126 subsections (B), (C), and (D) to better clarify for which annuity options each age group is eligible.

   With the exception of the ID addition to R2-8-115, the amendments outlined above will clarify the rule language without substantively changing the rules' requirements, thereby reducing the regulatory burden imposed on the public. Amending R2-8-115 to require ID verification as indicated will prevent potential fraud against the agency by ensuring that the correct person is requesting withdrawal of an inactive member's account. This rulemaking will help the ASRS control and mitigate possible delays associated with a withdrawal of an inactive member's account, resulting in the more efficient operation and administration of the ASRS.

   a. The conduct and its frequency of occurrence that the rule is designed to change:

      Currently, R2-8-115 states that the ASRS provides the Ending Payroll Verification-Withdrawal of Contribution and Termination of Membership form to the member. However, the form is completed by the employer electronically, not the member. This rulemaking will update the rule to reflect current agency practice, which is to provide the form to the employer electronically.

[1] If adequate data are not reasonably available, the agency shall explain the limitations of the data, the methods used in an attempt to obtain the data, and characterize the probable impacts in qualitative terms. (A.R.S. § 41-1055(C)).

In the past fiscal year, approximately ten members who are ten years, or more, older than an ex-spouse have listed that ex-spouse as the contingent annuitant pursuant to a DRO. The ASRS expects more members to list such ex-spouses as contingent annuitants in the future, as more members may become divorced.

Currently, the ASRS does not require any proof of identification for a member who has been inactive for five years or more to withdraw an account balance of $1000 or more. In CY 2012, 95 members who had been inactive for five or more years requested to refund an account of $1000 or more. In CY 2013, 77 members met that criteria and 90 members met that criteria in CY 2014.

b. <u>The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed:</u>

The ASRS spends limited resources determining whether an ex-spouse meets the age limitations for a particular joint-and-survivor annuity option. Moreover, the ASRS expends resources to rectify any issues resulting from distributing funds pursuant to an invalid contingent annuitant. Without this rulemaking, a member who is ten years, or more, older than the ex-spouse, cannot list the ex-spouse as the contingent annuitant regardless of whether it is required by a DRO.

The ASRS spends limited resources to complete a withdrawal on behalf of a member and must expend additional resources to rectify any issues resulting from an improper withdrawal. Without this rulemaking, a person, acting as the member by providing certain information, could request to withdraw an account balance of $1000, or more, that has been inactive for five years or more, without providing any proof of the person's identity. Improper withdrawals of accounts with $1000, or more, would impact the fund significantly.

c. <u>The estimated change in frequency of the targeted conduct expected from the rule change:</u>

With this rulemaking, the Ending Payroll Verification-Withdrawal of Contribution and Termination of Membership form will be provided to ASRS employers electronically.

With these amendments, all members who are ten years, or more, older than an ex-spouse will be able to list that ex-spouse as a contingent annuitant, if the ex-spouse was listed as the contingent annuitant prior to divorce and the member submits a DRO that requires the ex-spouse to be listed as the contingent annuitant.

With this rulemaking, all members who are requesting to withdraw an account balance of $1000, or more, on an account that has been inactive for five, or more, years, must submit a copy of a government issued ID. This ID requirement will help the ASRS ensure that the person requesting the withdrawal is the member entitled to make the request; also, it will prevent these types of improper withdrawals from occurring in the future and adversely affecting the fund.

2. A brief summary of the information included in the economic, small business, and consumer impact statement:

   Other than the minimal cost to the ASRS to prepare the rule package, there is little to no economic, small business, or consumer impact. The rules will have minimal economic impact, if any, because the rulemaking simply clarifies requirements that the ASRS enforces in rule already. There may be some additional cost to some members who must provide documentation to verify their identity when specific criteria are present as mentioned above. However, those costs should be minimal because the ASRS will accept a copy of any government issued ID for such verification purposes.

3. The person to contact to submit or request additional data on the information included in the economic, small business, and consumer impact statement:

   Name: Jessica A. Ross, Rules Writer
   Address: Arizona State Retirement System
   3300 N. Central Ave., Suite 1400
   Phoenix, AZ 85012-0250
   Telephone: (602) 240-2039
   E-mail: JessicaR@azasrs.gov

4. Persons who will be directly affected by, bear the costs of, or directly benefit from the rulemaking:

   In general, all members of the ASRS will be directly affected by, bear the costs of, and directly benefit from this rulemaking. The ASRS incurred the cost of the rulemaking. The ASRS currently has a total membership of approximately 548,987.

Specifically, members requesting to withdraw an account balance of $1000 or more, which have been inactive for 5 or more years will be directly affected by this rulemaking because they will be required to provide a copy of a government issued ID prior to withdrawing. However, costs will be minimal, as discussed above, because the ASRS will accept a copy of any government issued ID.

Employers will be required to submit the Ending Payroll Verification-Withdrawal of Contribution and Termination of Membership form electronically if a payroll transaction for the member occurred with the ASRS employer within six months before the ASRS provides the withdrawal documents.

All divorcing members and ex-spouses will directly benefit from this rulemaking in that they will be able to divide their marital assets with more flexibility and certainty, as discussed with regard to listing contingent annuitants above.

5. Cost-benefit analysis:
    a. Costs and benefits to state agencies directly affected by the rulemaking including the number of new full-time employees at the implementing agency required to implement and enforce the proposed rule:
    ASRS is the only state agency directly affected by the rulemaking. The ASRS has determined that no new full-time employees will be required to implement and enforce the rule.

    b. Costs and benefits to political subdivisions directly affected by the rulemaking:
    No political subdivisions are directly affected by the rulemaking.

    c. Costs and benefits to businesses directly affected by the rulemaking:
    No businesses are directly affected by the rulemaking.

6. Impact on private and public employment:
    The rulemaking will have no impact on private or public employment.

7. Impact on small businesses[2]:

   a. Identification of the small business subject to the rulemaking:
      No businesses, regardless of size, are subject to the rulemaking.

   b. Administrative and other costs required for compliance with the rulemaking:
      Not applicable

   c. Description of methods that may be used to reduce the impact on small businesses:
      Not applicable

8. Cost and benefit to private persons and consumers who are directly affected by the rulemaking:
   All ASRS members are directly affected by the rulemaking. The effect has been previously described above.

9. Probable effects on state revenues:
   There will be no effect on state revenues.

10. Less intrusive or less costly alternative methods considered:
    The ASRS believes this is the least costly and least intrusive method because it allows for more flexibility and certainty in listing a contingent annuitant for a particular subset of members (i.e. those divorced members who are ten years, or more, older than an ex-spouse and who have a DRO requiring that ex-spouse to be listed as a contingent annuitant). Similarly, the ID requirement discussed above provides more security to ASRS members by ensuring that those types of improper withdrawals are not made. As discussed above, the cost is minimal because the ASRS will accept a copy of any government issued ID.

[2] Small business has the meaning specified in A.R.S. § 41-1001(20).

**TITLE 2. ADMINISTRATION**

## CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

Authority: A.R.S. § 38-701 et seq.

## ARTICLE 1. RETIREMENT SYSTEM; DEFINED BENEFIT PLAN

Section

R2-8-101. Repealed
R2-8-102. Repealed
R2-8-103. Repealed
R2-8-104. Definitions
R2-8-105. Repealed
R2-8-106. Reserved
R2-8-107. Reserved
R2-8-108. Reserved
R2-8-109. Reserved
R2-8-110. Reserved
R2-8-111. Reserved
R2-8-112. Reserved
R2-8-113. Emergency Expired
R2-8-114. Emergency Expired
R2-8-115. Return of Contributions Upon Termination of Membership by Separation from All ASRS Employment by Other Than Retirement or Death; Payment of Survivor Benefits Upon the Death of a Member
R2-8-116. Expired
R2-8-117. Repealed
R2-8-118. Application of Interest Rates
R2-8-119. Expired
R2-8-120. Designating a Beneficiary; Spousal Consent to Designation
R2-8-121. Repealed
R2-8-122. Remittance of contributions
R2-8-123. Actuarial Assumptions and Actuarial Value of Assets
Table 1. Expired
Table 2. Expired
Table 3. Repealed
Table 3A. Expired
Table 3B. Expired
Table 4. Expired
Table 4A. Repealed
Table 4B. Repealed
Table 4C. Repealed
Table 5. Expired
Table 6. Expired
Table 7. Expired
R2-8-124. Repealed
R2-8-125. Repealed
R2-8-126. Calculating Benefits
Table 1. Repealed
Table 2. Repealed
Table 3. Repealed
Table 4. Repealed
Table 5. Repealed
Table 6. Repealed
Table 7. Repealed
Table 8. Repealed
Table 9. Repealed
Table 10. Repealed
Table 11. Repealed
Exhibit A. Repealed
Exhibit B. Repealed
Table 1. Repealed
Table 2. Repealed

Table 3. Repealed
Exhibit C. Repealed
Exhibit D. Repealed
Table 1. Repealed
Table 2. Repealed
Table 3. Repealed
Table 4. Repealed
Table 5. Repealed
Table 6. Repealed
Exhibit E. Repealed
Table 1. Repealed
Table 2. Repealed
Table 3. Repealed
Table 4. Repealed
Table 5. Repealed
Table 6. Repealed
Exhibit F. Repealed
Table 1. Repealed
Table 2. Repealed
Table 3. Repealed
Table 4. Repealed
Table 5. Repealed
Table 6. Repealed
Exhibit G. Repealed
Exhibit H. Repealed
Exhibit I. Repealed
Exhibit J. Repealed
Exhibit K. Repealed
Exhibit L. Repealed
Table 1. Repealed
Table 2. Repealed
Table 3. Repealed
Table 4. Repealed
Table 5. Repealed
Table 6. Repealed
Table 7. Repealed
Exhibit M. Repealed
Table 1. Repealed
Table 2. Repealed
Table 3. Repealed
Table 4. Repealed
Table 5. Repealed
Table 6. Repealed

## ARTICLE 2. STATE RETIREMENT DEFINED CONTRIBUTION PROGRAM

***Article 2, consisting of R2-8-201 through R2-8-207, made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2).***

Section
R2-8-201. Expired
R2-8-202. Expired
R2-8-203. Expired
R2-8-204. Expired
R2-8-205. Expired
R2-8-206. Expired
R2-8-207. Expired

## ARTICLE 3. RESERVED

## ARTICLE 4. PRACTICE AND PROCEDURE BEFORE THE BOARD

***Article 4, consisting of R2-8-401 through R2-8-405, made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1).***

Section
R2-8-401. Definitions
R2-8-402. General Procedures
R2-8-403. Request for a Hearing of an Appealable Agency Action
R2-8-404. Board Decisions on Hearings before the Office of Administrative Hearings
R2-8-405. Rehearing; Review of a Final Decision

## ARTICLE 5. PURCHASING SERVICE CREDIT

***Article 5, consisting of R2-8-501 through R2-8-521, made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2).***

R2-8-501. Definitions
R2-8-502. Request to Purchase Service Credit and Notification of Cost
R2-8-503. Requirements Applicable to All Service Credit Purchases
R2-8-504. Service Credit Calculation for Purchasing Service Credit
R2-8-505. Restrictions on Purchasing Overlapping Service Credit; Transfers
R2-8-506. Cost Calculation for Purchasing Service Credit
R2-8-507. Required Documentation and Calculations for Forfeited Service Credit
R2-8-508. Required Documentation and Calculations for Leave of Absence Service Credit
R2-8-509. Required Documentation and Calculations for Military Service Credit
R2-8-510. Required Documentation and Calculations for Presidential Call-up Service Credit
R2-8-511. Required Documentation and Calculations for Other Public Service Credit
R2-8-512. Purchasing Service Credit by Check, Cashier's Check, or Money Order
R2-8-513. Purchasing Service Credit by Irrevocable Payroll Deduction Authorization
R2-8-513.01. Irrevocable Payroll Deduction Authorization and Transfer of Employment to a Different ASRS Employer
R2-8-513.02. Termination Date
R2-8-514. Purchasing Service Credit by Direct Rollover
R2-8-515. Purchasing Service Credit by Trustee-to-Trustee Transfer
R2-8-516. Purchasing Service Credit by Indirect IRA Rollover
R2-8-517. Purchasing Service Credit by Distributed Rollover Contribution
R2-8-518. Repealed
R2-8-519. Purchasing Service Credit by Termination Pay Distribution
R2-8-520. Termination of Employment and Request Return of Retirement Contributions or Death of Member While Purchasing Service Credit by an Irrevocable Payroll Deduction Authorization
R2-8-521. Adjustment of Errors

## ARTICLE 6. PUBLIC PARTICIPATION IN RULEMAKING

***Article 6, consisting of R2-8-601 through R2-8-607, made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1).***

Section
R2-8-601. Definitions
R2-8-602. Reviewing Agency Rulemaking Record and Directory of Substantive Policy Statements
R2-8-603. Petition for Rulemaking
R2-8-604. Review of a Rule, Agency Practice, or Substantive Policy Statement
R2-8-605. Objection to Rule Based Upon Economic, Small Business, and Consumer Impact
R2-8-606. Oral Proceedings
R2-8-607. Petition for Delayed Effective Date

## ARTICLE 7. CONTRIBUTIONS NOT WITHHELD

***Article 7, consisting of R2-8-701 through R2-8-709, made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4).***

Section
R2-8-701. Definitions
R2-8-702. General Information
R2-8-703. ASRS Employer's Discovery of Error
R2-8-704. Member's Discovery of Error
R2-8-705. ASRS' Discovery of Error
R2-8-706. Determination of Contributions Not Withheld
R2-8-707. Submission of Payment
R2-8-708. Dispute of an ASRS Determination Regarding Contributions Not Withheld
R2-8-709. Nonpayment of Contributions

## ARTICLE 1. RETIREMENT SYSTEM; DEFINED BENEFIT PLAN

**R2-8-101. Repealed**

**Historical Note**

Former Rule, Social Security Regulation 1; Former Section R2-8-01 renumbered as Section R2-8-101 without change effective May 21, 1982 (Supp. 82-3). Amended subsections (A) and (C) effective April 12, 1984 (Supp. 84-2). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1).

**R2-8-102. Repealed**

**Historical Note**

Former Rule, Social Security Regulation 2; Amended effective April 15, 1980 (Supp. 80-2). Former Section R2-8-02 renumbered as Section R2-8-102 without change effective May 21, 1982 (Supp. 82-3). Amended as an emergency by adding subsection (E) effective January 1, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Emergency expired. Permanent rule, subsections (A), (B), and (D), amended effective April 12, 1984 (Supp. 84-2). Correction, subsection (B), as amended effective April 12, 1984 (Supp. 84-3). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1).

**R2-8-103. Repealed**

**Historical Note**

Former Rule, Social Security Regulation 3; Amended effective April 15, 1980 (Supp. 80-2). Former Section R2-8-03 renumbered as Section R2-8-103 without change effective May 21, 1982 (Supp. 82-3). Amended as an emergency by adding subsection (E) effective January 1, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Emergency expired. Permanent rule, subsections (A) thru (C), amended effective April 12, 1984 (Supp. 84-2). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1).

**R2-8-104. Definitions**

A. The definitions in A.R.S. § 38-711 apply to this Chapter.

B. Unless otherwise specified, in this Chapter:

1. "Actuarial assumption" means an estimate of an uncertain future event that affects pension liabilities, or assets, or both.
2. "Authorized employer representative" means an individual specified by the ASRS employer to provide the ASRS with information about a member who previously worked for the ASRS employer.
3. "Contribution" means:
   a. Amounts required by A.R.S. Title 38, Chapter 5, Article 2 to be paid to the ASRS by a member or an employer on behalf of a member other than amounts attributed to the long-term disability program;
   b. Any voluntary amounts paid to the ASRS by a member to be placed in the member's account; and
   c. Amounts credited by transfer under A.R.S. § 38-924.
4. "Day" means a calendar day, and excludes the:
   a. Day of the act or event from which a designated period of time begins to run; and
   b. Last day of the period if a Saturday, Sunday, or official state holiday.
5. "Designated beneficiary" means the same as in A.R.S. § 38-762(G).
6. "Director" means the Director appointed by the Board as provided in A.R.S. § 38-715.
7. "Individual retirement account" or "IRA" means the types of eligible retirement plans specified in A.R.S. § 38-770(D)(3)(a) and (b).
8. "Investment return rate" means a percentage of total return on an asset.
9. "Party" means the same as in A.R.S. § 41-1001(14).
10. "Person" means the same as in A.R.S. § 41-1001(15).
11. "Plan" means the same as "defined benefit plan" in A.R.S. § 38-712(B), and as administered by the ASRS.
12. "Retirement account" means the same as in A.R.S. § 38-771(J)(2).
13. "Rollover" means a contribution to the ASRS by an eligible member of an eligible rollover distribution from one or more of the retirement plans listed in A.R.S. § 38-747(H)(2) and (H)(3).
14. "System" means the same as "defined contribution plan" in A.R.S. § 38-769(O)(7), and as administered by the ASRS.
15. "Terminate employment" means to end the employment relationship between a member and an ASRS employer with the intent that the member does not return to employment with an ASRS employer.
16. "United States" means the same as in A.R.S. § 1-215(39).

**Historical Note**

Former Rule, Social Security Regulation 4; Former Section R2-8-04 renumbered as Section R2-8-104 without change effective May 21, 1982 (Supp. 82-3). Amended subsections (G), (J), and (K) effective April 12, 1984 (Supp. 84-2). Typographical error corrected in subsection (5)(c) "reqired" corrected to "required" (Supp. 97-1). Amended…

**R2-8-105. Repealed**

**Historical Note**

Former Rule, Social Security Regulation 5; Amended effective April 15, 1980 (Supp. 80-2). Former Section R2-8-05 renumbered as Section R2-8-105 without change effective May 21, 1982 (Supp. 82-3). Amended as an emergency by adding subsection (E) effective January 1, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Emergency expired. Permanent rule amended effective April 12, 1984 (Supp. 84-2). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1).

**R2-8-106. Reserved**
**R2-8-107. Reserved**
**R2-8-108. Reserved**
**R2-8-109. Reserved**
**R2-8-110. Reserved**
**R2-8-111. Reserved**
**R2-8-112. Reserved**
**R2-8-113. Emergency Expired**

**Historical Note**

New Section made by emergency rulemaking at 11 A.A.R. 579, effective January 4, 2005 (05-1). Emergency rule expired (Supp. 05-2).

**R2-8-114. Emergency Expired**

**Historical Note**

New Section made by emergency rulemaking at 11 A.A.R. 579, effective January 4, 2005 (05-1). Emergency rule expired (Supp. 05-2).

**R2-8-115. Return of Contributions Upon Termination of Membership by Separation from All ASRS Employment by Other Than Retirement or Death; Payment of Survivor Benefits Upon the Death of a Member**

A. The following definitions apply to this Section unless otherwise specified:
1. "Acceptable documentation" means any ASRS form request containing all the accurate, required information, dates, and signatures necessary to process the form request.
2. "Eligible retirement plan" means the same as in A.R.S. § 38-770(D)(3).
3. "Employer number" means a unique identifier the ASRS assigns to a member employer.
4. "Employer plan" means the types of eligible retirement plans specified in A.R.S. § 38-770(D)(3)(c), (d), (e), and (f).
5. "Process date" means the calendar day the ASRS generates contribution withdrawal documents to be sent to a member.
6. "Warrant" means a voucher authorizing payment of funds due to a member.

B. A member who terminates from all ASRS employment by other than retirement or death and desires a return of the member's contributions, including amounts received for the purchase of service, any employer contributions authorized under A.R.S. § 38-740, and interest on the contributions, shall request from the ASRS, in writing or verbally, the documents necessary to apply for the withdrawal of the member's contributions.

C. Upon receipt of the request, the ASRS shall provide the member with:
1. An Application for Withdrawal of Contributions and Termination of Membership form,
2. An Ending Payroll Verification - Withdrawal of Contribution and Termination of Membership form, and
3. The process date.

D. The member shall complete and return to the ASRS the Application for Withdrawal of Contributions and Termination of Membership form that includes the following information:
1. The member's full name;
2. The member's Social Security number;
3. The member's current mailing address;
4. The member's daytime telephone number, if applicable;
5. The member's birth date;
6. The date of termination;
7. Dated signature of the member certifying that the member:
   a. Is no longer employed by any ASRS employer;
   b. Is neither under contract nor has any verbal or written agreement for future employment with an ASRS employer;
   c. Is not currently in a leave of absence status with an ASRS employer;
   d. Understands that each of the member's former ASRS employers' payroll departments will complete a payroll verification form if payroll transactions occurred with the ASRS employer within the six months before the process date;
   e. Has read and understands the Special Tax Notice Regarding Plan Payments the member received with the application;
   f. Understands that the member is forfeiting all future retirement rights and privileges of membership with the ASRS;
   g. Understands that long-term disability benefits will be canceled if the member elects to withdraw contributions while receiving or electing to receive long-term disability benefits;
   h. Understands that if the member elects to roll over all or any portion of the member's distribution to another employer plan, it is the member's responsibility to verify that the receiving employer plan will accept the rollover and, if

applicable, agree to separately account for the pre-tax and post-tax amounts rolled over and the related subsequent earnings on the amounts;

i. Understands that if the member elects to roll over all or any portion of the member's distribution to an individual retirement account, it is the member's responsibility to separately account for pre-tax and post-tax amounts; and

j. Understands that if the member elects a rollover to another employer plan or individual retirement account, any portion of the distribution not designated for rollover will be paid directly to the member and any taxable amounts will be subject to 20% federal income tax withholding and 5% state tax withholding;

8. Specify that:

a. The entire amount of the distribution be paid directly to the member,

b. The entire amount of the distribution be transferred to an eligible retirement plan, or

c. An identified amount of the distribution be transferred to an eligible retirement plan and the remaining amount be paid directly to the member; and

9. If the member selects all or a portion of the withdrawal be paid to an eligible retirement plan, specify;

a. The type of eligible retirement plan;

b. The eligible retirement plan account number, if applicable; and

c. The name and mailing address of the eligible retirement plan.

E. If a payroll transaction for the member occurred with any ASRS employer within six months before the process date the member shall complete and return to the ASRS an Ending Payroll Verification - Withdrawal of Contributions and Termination of Membership form for each ASRS employer that includes the following information:

1. Filled out by the member:

a. The member's full name, and

b. The member's Social Security number; and

2. Filled out by each ASRS employer:

a. The member's termination date,

b. The member's final pay period ending date;

c. The final amount of contributions, including any adjustments or corrections, but not including any long-term disability contributions,

d. The ASRS employer's name and telephone number;

e. The employer number;

f. The name and title of the authorized employer representative;

g. Certification by the authorized employer representative that:

i. The member terminated employment and is neither under contract nor bound by any verbal or written agreement for employment with the employer;

ii. There is no agreement to re-employ the member; and

iii. The authorized employer representative has the legal power to bind the employer in transactions with the ASRS; and

h. The signature of the authorized employer representative and date of signature.

F. If the member requests a return of contributions and a warrant is distributed during the fiscal year that the member began membership in the ASRS, no interest is paid to the account of the member.

G. If the member requests a return of contributions after the first fiscal year of membership, the ASRS shall credit interest at the rate specified in Column 3 of the table in R2-8-118(A) to the account of the member as of June 30 of each year, on the basis of the balance in the account of the member as of the previous June 30. The ASRS shall credit interest for a partial fiscal year of membership in the ASRS on the previous June 30 balance based on the number of days of membership up to and including the day the ASRS issues the warrant divided by the total number days in the fiscal year. Contributions made after the previous June 30 are returned without interest.

H. Upon submitting to the ASRS the completed and accurate Application for Withdrawal of Contributions and Termination of Membership form and, if applicable, any Ending Payroll Verification - Withdrawal of Contributions and Termination of Membership forms, a member is entitled to payment of the amount due to the member as specified in subsection (F) or (G) unless a present or former spouse submits to the ASRS a domestic relations order that specifies entitlement to all or part of the return of contributions under A.R.S. § 38-773 before the ASRS returns the contributions as specified by the member.

I. Upon the death of a member, the ASRS shall distribute the survivor benefits according to the most recent, acceptable documentation that is on file with the ASRS that was received prior to the date of the member's death, unless otherwise provided by law.

J. If there is no designation of beneficiary or if the designated beneficiary predeceases the member, the survivor benefit is paid as specified in A.R.S. § 38-762(E). The designated beneficiary or other person specified in A.R.S. § 38-762(E) shall:

1. Provide a certified copy of a death certificate or a certified copy of a court order that establishes the member's death;

2. Provide a certified copy of the court order of appointment as administrator, if applicable; and

3. Except if the deceased member was retired and elected the joint and survivor option, complete and have notarized an application for survivor benefits, provided by the ASRS, that includes:

a. The deceased member's full name,

b. The deceased member's Social Security number,

c. The following, as it pertains to the designated beneficiary or other person specified in A.R.S. § 38-762(E):

i. Full name;
ii. Mailing address;
iii. Contact telephone number;
iv. Date of birth, if applicable; and
v. Social Security number or Tax ID number, if applicable.

**Historical Note**

Former Rule, Social Security Regulation 1; Amended effective Dec. 20, 1979 (Supp. 79-6). Former Section R2-8-15 renumbered as Section R2-8-115 without change effective May 21, 1982 (Supp. 82-3). Amended by final rulemaking at 11 A.A.R. 1416, effective April 5, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 644, effective February 7, 2006 (Supp. 06-1). Amended…

**R2-8-116. Expired**

**Historical Note**

Former Rule, Retirement System Regulation 2; Former Section R2-8-16 renumbered as Section R2-8-116 without change effective May 21, 1982 (Supp. 82-3). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**R2-8-117. Repealed**

**Historical Note**

Former Rule, Retirement System Regulation 3; Former Section R2-8-17 renumbered as Section R2-8-117 without change effective May 21, 1982 (Supp. 82-3). Section repealed by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2).

**R2-8-118. Application of Interest Rates**

A. Application of interest from inception of the ASRS through the present is as follows:

| Effective Date of Interest Rate Change | Assumed Actuarial Interest and Investment Return Rate | Interest Rate Used to Determine Return of Contributions Upon Termination of Membership by Separation from Service by Other Than Retirement or Death | | Interest Rate Used to Determine Survivor Benefits |
|---|---|---|---|---|
| 7-1-1953 | 2.50% | 2.50% | | 2.50% |
| 7-1-1959 | 3.00% | 3.00% | | 3.00% |
| 7-1-1966 | 3.75% | 3.75% | | 3.75% |
| 7-1-1969 | 4.25% | 4.25% | | 4.25% |
| 7-1-1971 | 4.75% | 4.75% | | 4.75% |
| 7-1-1975 | 5.50% | 5.50% | | 5.50% |
| 7-1-1976 | 6.00% | 5.50% | | 6.00% |
| 7-1-1981 | 7.00% | 5.50% | | 7.00% |
| 7-1-1982 | 7.00% | 7.00% | | 7.00% |
| 7-1-1984 | 8.00% | 8.00% | | 8.00% |
| 7-1-2005 | 8.00% | 4.00% for Plan Members | 8.00% for System Members | 8.00% |
| 7-1-2013 | 8.00% | 2.00% for Plan Members | 8.00% for System Members | 8.00% |

B. At the beginning of each fiscal year interest is credited to the retirement account of each member on the June 30 that marks the end of the fiscal year based on the balance in the member's account as of the previous June 30. The balance on which interest is credited includes:
1. Employer and employee contributions;
2. Voluntary additional contributions made by members, if applicable;
3. Amounts credited by transfer under A.R.S. § 38-924; and
4. Interest credited in previous years.

**Historical Note**

Former Rule, Retirement System Regulation 4; Amended effective July 1, 1975 (Supp. 75-1). Amended effective June 23, 1976 (Supp. 76-3). Former Section R2-8-18 renumbered and amended as Section R2-8-118 effective May 21, 1982 (Supp. 82-3). Amended by final rulemaking at 11 A.A.R. 1416, effective April 5, 2005 (Supp. 05-2). Amended by final rulemaking at 19 A.A.R. 764, effective June 1, 2013 (Supp. 13-2). Amended…

**R2-8-119. Expired**

**Historical Note**

Former Rule, Retirement System Regulation 5; Amended effective July 1, 1975 (Supp. 75-1). Amended effective June 23, 1976 (Supp. 76-3). Former Section R2-8-19 renumbered and amended as Section R2-8-119 effective May 21, 1982 (Supp. 82-3). Section R2-8-119 and Appendix A and B expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**R2-8-120. Designating a Beneficiary; Spousal Consent to Designation**

A. The following definitions apply to this Section unless otherwise specified:
   1. "DRO" means the same as "domestic relations order" in A.R.S. § 38-773(H)(1).
   2. "Joint and survivor annuity" means an optional form of retirement benefits described in A.R.S. § 38-760(B)(1).
   3. "Period certain and life annuity" means an optional form of retirement benefits described in A.R.S. § 38-760(B)(2).
   4. "Spouse" means the individual to whom a member is married under Arizona law.

B. Effective July 1, 2013, a married member:
   1. Who is not retired shall name and maintain the member's current spouse as primary beneficiary of at least 50 percent of the member's retirement account unless:
      a. Naming or maintaining the current spouse as beneficiary violates another law, existing contract, or court order; or
      b. The spouse consents to an alternate beneficiary; and
   2. Who retires shall choose a joint and survivor annuity and name the member's current spouse as contingent annuitant of at least 50 percent of the member's retirement benefit unless the spouse consents to an alternative.

C. Application of subsection (B).
   1. The ASRS shall honor a beneficiary designation last made or a retirement election submitted before July 1, 2013, even if the beneficiary designation or retirement election fails to comply with subsection (B).
   2. The ASRS shall not apply subsection (B) to a lump-sum retirement authorized under A.R.S. § 38-764.
   3. The ASRS shall not apply subsection (B) if a member submits a letter to the ASRS in which the member affirms under penalty of perjury that spousal consent is not required because of one of the reasons specified in A.R.S. § 38-776(C).

D. Changing a beneficiary designation:
   1. If a married member changes a beneficiary designation on or after July 1, 2013, the member shall ensure that the new beneficiary designation is consistent with the requirements specified in subsection (B);
   2. If a married member who retired before July 1, 2013, and:
      a. Chose a straight-life annuity wishes to change the member's beneficiary, the member shall ensure that the new beneficiary designation is consistent with subsection (B); or
      b. Chose a period certain and life annuity or joint and survivor annuity wishes to change either the annuity option or the contingent annuitant, the member shall ensure that the new beneficiary designation is consistent with subsection (B).

E. Re-retirement. A married member who re-retires, as described in A.R.S. § 38-766:
   1. Within 60 months of the member's previous retirement date, shall elect the same annuity option and beneficiary as the member made at the time of the previous retirement; or
   2. More than 60 months after the member's previous retirement date, shall comply with subsection (B).

F. Involuntary cancellation of retirement. If a married member retires on or after July 1, 2013, and is issued one or more estimate checks but fails to comply with subsection (B) within 30 days after the member's effective retirement date, the member shall submit a signed letter to ASRS stating that the member's spouse refuses to consent to the chosen alternative and asking that the retirement be cancelled. The member may submit another retirement application that complies with subsection (B). The member's new effective retirement date is the date ASRS receives the new application. ASRS shall not issue additional estimate checks to a member whose retirement was involuntarily cancelled.

G. Survivor benefits:
   1. If a married member last made a beneficiary designation before July 1, 2013, the ASRS shall, at the time of the member's death, honor the beneficiary designation even if the beneficiary designation is not consistent with the requirements specified in subsection (B); and
   2. If a married member made a beneficiary designation on or after July 1, 2013, that is not consistent with the requirements specified in subsection (B), the ASRS shall, at the time of the member's death:
      a. Notify both the spouse and designated beneficiary and:
         i. Provide the spouse with an opportunity to waive the right under subsection (B); and
         ii. Provide the designated beneficiary with an opportunity to provide documentation that revokes the spouse's right under subsection (B); and
      b. Designate 50 percent of the member's retirement benefit to the spouse if neither the spouse nor designated beneficiary respond under subsection (G)(2)(a) within 30 days after notification.

H. Effect of legal documents. In general, a legal document such as a QDRO or prenuptial agreement will supersede the requirements in subsection (B). The ASRS shall ask the Office of the Attorney General to review the legal document before the ASRS decides how to disburse the retirement benefit.

I. Spousal waiver and consent; consent revocation
   1. The current spouse of a member has a right to:

a. Be designated as primary beneficiary of at least 50 percent of the member's retirement account, and
b. Have the member choose a joint and survivor annuity with the spouse as contingent annuitant of at least 50 percent of the retirement benefit.

2. To waive the right described in subsection (I)(1) and consent to an alternative, the current spouse shall complete and have notarized a spousal consent form, which is available from the ASRS. If the current spouse is not capable of completing the spousal consent form because of a documented incapacitating mental or physical condition, a person with power of attorney or a conservator may complete the spousal consent form on behalf of the current spouse.
3. A spouse may revoke a waiver and consent by sending written notice to ASRS and ensuring the written notice is received no later than the earlier of one day before the member dies or ASRS disburses a retirement benefit to the member.

**Historical Note**

Former Rule, Social Security Regulation 6; Amended effective June 19, 1975 (Supp. 75-1). Amended effective July 13, 1979 (Supp. 79-4). Former Section R2-8-20 renumbered and amended as Section R2-8-120 effective May 21, 1982 (Supp. 82-3). Repealed effective July 24, 1985 (Supp. 85-4). New Section made by final rulemaking at 20 A.A.R. 2236, effective October 4, 2014 (Supp. 14-X). Amended…

**R2-8-121. Repealed**

**Historical Note**

Former Rule, Retirement System Regulation 7; Amended effective April 15, 1980 (Supp. 80-2). Former Section R2-8-21 renumbered as Section R2-8-121 without change effective May 21, 1982 (Supp. 82-3). Amended subsection (A) effective May 30, 1985 (Supp. 85-3). Section repealed by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (05-1).

**R2-8-122. Remittance of contributions**

A. Remittance of employee member contributions: Each state department and employer member of the Arizona State Retirement System, including, without limitation, any county, municipality or political subdivision, shall certify on each payroll the amount to be contributed by each one of their employee members of the Arizona State Retirement System and shall remit the amount of employee member contributions to the Arizona State Retirement System, together with such detailed report as may be required by the System to identify the individual owner of each such member contribution, not later than 14 calendar days after the last day of each payroll period. Payments of employee member contributions not received in the offices of the Arizona State Retirement System by the 14th calendar day after the last day of the applicable payroll period shall become delinquent after that date and shall be increased, by interest at the rate of eight percent per annum from and after the date of delinquency until payment is received by the Arizona State Retirement System.

B. Remittance of employer contributions: Each state department and employer member of the Arizona State Retirement System, including, without limitation, any county, municipality or political subdivision, shall remit the amount of employer contributions to the Arizona State Retirement System not later than 14 calendar days after the last day of each payroll period. Payments of employer contributions not received in the offices of the Arizona State Retirement System by the 14th calendar day after the last day of the applicable payroll period shall become delinquent after that date and shall be increased, by interest at the rate of eight percent per annum from and after the date of delinquency until payment is received by the Arizona State Retirement System.

**Historical Note**

Former Rule, Retirement System Regulation 8; Amended effective Dec. 8, 1978 (Supp. 78-6). Former Section R2-8-22 renumbered as Section R2-8-122 without change effective May 21, 1982 (Supp. 82-3).

**R2-8-123. Actuarial Assumptions and Actuarial Value of Assets**

A. For the purposes of this Section, "market value" means an estimated monetary worth of an asset based on the current demand for the asset and the amount of that type of asset available for sale.

B. The Board adopts the following actuarial assumptions and asset valuation method:
1. The interest and investment return rate assumptions are determined by the Board.
2. The actuarial value of assets equals the market value of assets:
a. Minus a 10-year phase-in of the excess for years in which actual investment return exceeds expected investment return; and
b. Plus a 10-year phase-in of the shortfall for years in which actual investment return falls short of expected investment return.

**Historical Note**

Adopted effective July 1, 1975 (Supp. 75-1). Amended effective June 23, 1976 (Supp. 76-3). Amended effective December 20, 1977 (Supp. 77-6). Former Section R2-8-23 renumbered and amended as Section R2-8-123 effective May 21, 1982 (Supp. 82-3). Emergency amendments effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency amendments adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent amendments adopted effective December 22, 1993 (Supp. 93-4). Emergency amendments adopted effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days

(Supp. 97-1). Emergency expired. Permanent amendments adopted effective September 12, 1997 (Supp. 97-3). Amended by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 1006, effective February 24, 2003 for a period of 180 days (Supp. 03-1). Emergency rulemaking renewed at 9 A.A.R. 3963, effective August 21, 2003 for a period of 180 days (Supp. 03-3). Amended by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Amended by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 20 A.A.R. 3043, effective January 3, 2015 (Supp. 15-X). Amended…

**Table 1. Expired**

**Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Emergency amendments to Table 1 adopted effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Permanent amendments adopted effective September 12, 1997 (Supp. 97-3). Amended by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**Table 2. Expired**

**Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Emergency amendments to Table 2 adopted effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Permanent amendments adopted effective September 12, 1997 (Supp. 97-3). Amended by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**Table 3. Repealed**

**Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Emergency amendments to Table 3 adopted effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Permanent amendments adopted effective September 12, 1997 (Supp. 97-3). Table 3 repealed; new Table 3 renumbered from Table 4 by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Table repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Table 3A. Expired**

**Historical Note**

New Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). New Table made by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**Table 3B. Expired**

**Historical Note**

New Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). New Table made by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**Table 4. Expired**

**Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Table 4 renumbered as Table 3 by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). New Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). New Table made by final rulemaking

at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**Table 4A. Repealed**

**Historical Note**

New Table made by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Table repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Table 4B. Repealed**

**Historical Note**

New Table made by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Table repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Table 4C. Repealed**

**Historical Note**

New Table made by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Table repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Table 5. Expired**

**Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Table 5 repealed, new Table 5 adopted by emergency action effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Table 5 repealed, new Table 5 adopted by regular rulemaking action effective September 12, 1997 (Supp. 97-3). Table 5 repealed; new Table 5 renumbered from Table 6 and amended by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed; new Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Former Table 5 renumbered to Table 6; new Table 5 made by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**Table 6. Expired**

**Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Table repealed, new Table adopted effective September 12, 1997 (Supp. 97-3). Former Table 6 renumbered to Table 5; new Table 6 renumbered from Table 7 and amended by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed; new Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Former Table 6 renumbered to Table 7; new Table 6 renumbered from Table 5 and amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**Table 7. Expired**

**Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Table repealed, new Table adopted effective September 12, 1997 (Supp. 97-3). Renumbered to Table 6 by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). New Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Table 7 renumbered from Table 6 and amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**R2-8-124. Repealed**

**Historical Note**

Adopted as an emergency effective August 25, 1975 (Supp. 75-1). Former Section R2-8-24 renumbered as Section R2-8-124 without change effective May 21, 1982 (Supp. 82-3). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1).

**R2-8-125. Repealed**

**Historical Note**

Adopted as an emergency effective July 30, 1975 (Supp. 75-1). Former Section R2-8-25 renumbered as Section R2-8-125 without change effective May 21, 1982 (Supp. 82-3). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1).

**R2-8-126. Calculating Benefits**

A. For the purposes of this Section, "prior service credit" means a "service credit" listed in R2-8-501(24), credited service that is earned pursuant to A.R.S. § 38-739, or a service credit that is transferred or redeemed pursuant to A.R.S. §§ 38-730, 38-771, or 38-921 et seq.

B. An individual who is 104 years of age or older at the time of retirement and who elects a life annuity is not eligible to select the option of income for five years certain and for life thereafter.

C. An individual who is 93 years of age or older at the time of retirement and who elects a life annuity is not eligible to select the option of income for ten years certain and for life thereafter.

D. An individual who is 85 years of age or older at the time of retirement and who elects a life annuity is not eligible to select the option of income for 15 years certain and for life thereafter.

E. As authorized under A.R.S. § 38-764(F), if the life annuity of any Plan member is less than a monthly amount determined by the Board, the ASRS shall not pay the annuity. Instead, the ASRS shall make a lump sum payment in the amount determined by using appropriate actuarial assumptions.

F. The ASRS shall calculate a member's or beneficiary's benefits, based on the attained age of the member or beneficiary, determined in years and full months, as of the effective date of the benefit payment.

G. The ASRS shall add any prior service credit benefit that is payable to a member to the life annuity of the member before the ASRS applies any optional payment plan calculation provided for in A.R.S. § 38-760.

H. A member who is ten or more years older than the member's non-spousal contingent annuitant is not eligible to participate in a 100% joint-and-survivor option. A member who is 24 or more years older than the member's non-spousal contingent annuitant is not eligible to participate in a 66 2/3% joint-and-survivor option.

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Amended effective July 13, 1979 (Supp. 79-4). Former Section R2-8-26 renumbered and amended as Section R2-8-126 effective May 21, 1982 (Supp. 82-3). Amended subsections (A) through (D) effective October 18, 1984 (Supp. 84-5). Amended subsections (A) through (D) effective July 24, 1985 (Supp. 85-4). Amended by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency amendments adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Amended by emergency rulemaking at 7 A.A.R. 1621, effective March 21, 2001 (Supp. 01-1). Amended by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Amended by final rulemaking at 19 A.A.R. 332, effective April 6, 2013 (Supp. 13-1). Amended…

**Table 1. Repealed**

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 1 repealed, new Table 1 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 2. Repealed**

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 2 repealed, new Table 2 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 3. Repealed**

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 3 repealed, new Table 3 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 4. Repealed**

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 4 repealed, new Table 4 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 5. Repealed**

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 5 repealed, new Table 5 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 6. Repealed**

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 6 repealed, new Table 6 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 7. Repealed**

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 7 repealed, new Table 7 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 8. Repealed**

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 8 repealed, new Table 8 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 9. Repealed**

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 9 repealed, new Table 9 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 10. Repealed**

**Historical Note**

Adopted effective October 18, 1984 (Supp. 84-5). Table 10 repealed, new Table 10 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 11. Repealed**

**Historical Note**

Adopted effective October 18, 1984 (Supp. 84-5). Table 11 repealed, new Table 11 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Exhibit A. Repealed**

**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit B, Table 1. Repealed**

**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit B, Table 2. Repealed**

**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit B, Table 3. Repealed**

**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit C. Repealed**

**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit D, Table 1. Repealed**

**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit D, Table 2. Repealed**

**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit D, Table 3. Repealed**

**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit D, Table 4. Repealed**

**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit D, Table 5. Repealed**

**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit D, Table 6. Repealed**

**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit E, Table 1. Repealed**

**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit E, Table 2. Repealed**

**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit E, Table 3. Repealed**

**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit E, Table 4. Repealed**

**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit E, Table 5. Repealed**

**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit E, Table 6. Repealed**

**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking

under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit F, Table 1. Repealed**

**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit F, Table 2. Repealed**

**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit F, Table 3. Repealed**

**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit F, Table 4. Repealed**

**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit F, Table 5. Repealed**

**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit F, Table 6. Repealed**

**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit G. Repealed**

**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit H. Repealed**

**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit I. Repealed**

**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit J. Repealed**

**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit K. Repealed**

**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit L, Table 1. Repealed**

**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Amended by emergency rulemaking at 7 A.A.R. 1621, effective March 21, 2001 (Supp. 01-1). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit L, Table 2. Repealed**

**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Amended by emergency rulemaking at 7 A.A.R. 1621, effective March 21, 2001 (Supp. 01-1). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit L, Table 3. Repealed**

**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Amended by emergency rulemaking at 7 A.A.R. 1621, effective March 21, 2001 (Supp. 01-1). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit L, Table 4. Repealed**

**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Amended by emergency rulemaking

at 7 A.A.R. 1621, effective March 21, 2001 (Supp. 01-1). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit L, Table 5. Repealed**

**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Amended by emergency rulemaking at 7 A.A.R. 1621, effective March 21, 2001 (Supp. 01-1). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit L, Table 6. Repealed**

**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Amended by emergency rulemaking at 7 A.A.R. 1621, effective March 21, 2001 (Supp. 01-1). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit L, Table 7. Repealed**

**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Amended by emergency rulemaking at 7 A.A.R. 1621, effective March 21, 2001 (Supp. 01-1). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit M, Table 1. Repealed**

**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit M, Table 2. Repealed**

**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit M, Table 3. Repealed**

**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit M, Table 4. Repealed**

**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit M, Table 5. Repealed**

**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit M, Table 6. Repealed**

**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

## ARTICLE 2. STATE RETIREMENT DEFINED CONTRIBUTION PROGRAM

***Article 2, consisting of R2-8-201 through R2-8-207, made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2).***

**R2-8-201. Expired**

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(E) at

**R2-8-202. Expired**

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Amended by emergency rulemaking at 10 A.A.R. 4259, effective September 30, 2004 (Supp. 04-3). Amended by final rulemaking at 10 A.A.R. 4346, effective October 5, 2004 (Supp. 04-3). Section amended and Table 1 repealed by final rulemaking at 13 A.A.R. 4581, effective February 2, 2008 (Supp. 07-4). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**R2-8-203. Expired**

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**R2-8-204. Expired**

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**R2-8-205. Expired**

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**R2-8-206. Expired**

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**R2-8-207. Expired**

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(E) at

## ARTICLE 3. RESERVED

## ARTICLE 4. PRACTICE AND PROCEDURE BEFORE THE BOARD

**R2-8-401. Definitions**

"Appealable agency action" means the same as in A.R.S. § 41-1092(3).

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1). Amended…

**R2-8-402. General Procedures**

In computing any time period, parties shall exclude the day from which the designated time period begins to run. Parties shall include the last day of the period unless it falls on a Saturday, Sunday, or legal holiday. When the time period is 10 days or less, parties shall exclude Saturdays, Sundays, and legal holidays.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1).

**R2-8-403. Request for a Hearing of an Appealable Agency Action**

A. A person who is not satisfied with a decision by the Director that is an appealable agency action may file a Request for a Hearing, in writing, with the Director. The request shall include the following:
   1. The name and mailing address of the member, employer, or other person filing the request;
   2. The name and mailing address of the attorney for the person filing the request, if applicable;
   3. A concise statement of the reasons for the appeal.

B. The person requesting a hearing shall file the Request for a Hearing with the ASRS Office of the Director within 30 days after receiving a decision of the Director and a Notice of an Appealable Agency Action. The date the request is filed is established by the Director's date stamp on the face of the first page of the request.

C. Upon receipt of the Request for a Hearing, the ASRS shall notify the Office of Administrative Hearings as required in A.R.S. § 41-1092.03.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1).

**R2-8-404. Board Decisions on Hearings before the Office of Administrative Hearings**

A recommended decision from the Office of Administrative Hearings that is sent to ASRS at least 30 days before the Board's next regular monthly meeting, shall be reviewed by the Board at that monthly meeting. At the monthly meeting, the Board shall render a decision to accept, reject, or modify the findings of fact, conclusions of law and recommendations in whole or in part. If the Board modifies or rejects a recommended decision, the Board shall state the reasons for the modification or rejection. The Board shall deliver the Board's final decision to the Office of Administrative Hearings within five days after the monthly meeting at which the Board made the final decision.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1).

**R2-8-405. Rehearing; Review of a Final Decision**

A. Except as provided in subsection (H), any party in an appealable agency action aggrieved by a final decision may file with the Board a written motion for rehearing or review of the final decision specifying the particular grounds not later than 30 days after service of the decision.

B. A party may amend a motion for rehearing or review at any time before the Board rules on the motion. A party may file a response within 15 days after the motion or amended motion is filed. The Board may require the filing of written briefs upon the issues raised in the motion and may provide for oral argument.

C. The Board may grant a rehearing or review of a decision for any of the following causes materially affecting the moving party's rights:
   1. Irregularity in the administrative proceedings of the agency or the hearing officer, or any order or abuse of discretion that deprives the moving party of a fair hearing;
   2. Misconduct of the Board, the hearing officer, or the prevailing party;
   3. Accident or surprise that could not have been prevented by ordinary prudence;
   4. Newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original hearing;
   5. Excessive or insufficient penalties;
   6. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing; or
   7. That the decision is not justified by the evidence or is contrary to law.

D. The Board may affirm or modify the decision or grant a rehearing or review to all or any of the parties on all or part of the issues for any of the reasons in subsection (C). An order granting a rehearing or review shall specify with particularity the grounds for the order.

E. Not later than 10 days after the decision, the Board may, after giving each party notice and an opportunity to be heard, order a rehearing or review of its decision for any reason for which it might have granted a rehearing or review on motion of a party.

After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Board may grant a motion for rehearing or review for a reason not stated in the motion. In either case, the order granting a rehearing or review shall specify the grounds on which it is granted.

F. When a motion for rehearing or review is based upon an affidavit, the affidavit shall be filed with the motion. An opposing party may, within 15 days after filing, file an opposing affidavit. The Board may extend the period for filing an opposing affidavit for not more than 20 days for good cause shown or by written stipulation of the parties. The Board may permit a reply affidavit.

G. The Board shall rule on the motion within 15 days after the response to the motion is filed or if a response is not filed, within five days of the expiration of the response period.

H. If the Board makes a specific finding that the immediate effectiveness of a particular decision is necessary for the preservation of the public peace, health, and safety and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the decision may be issued as a final decision without an opportunity for a rehearing or review. If a decision is issued as a final decision without an opportunity for rehearing or review, an application for judicial review of the decision may be made within the time limits permitted for applications for judicial review of the Board's final decisions.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1).

## ARTICLE 5. PURCHASING SERVICE CREDIT

### R2-8-501. Definitions

The following definitions apply to this Article unless otherwise specified:

1. "Active duty" means full-time duty in a branch of the United States uniformed service, other than active reserve duty.
2. "Active duty termination date" means the day a member:
   a. Separates from active military duty;
   b. Is released from active duty-related hospitalization or one year after initiation of active duty-related hospitalization, whichever date is earlier; or
   c. Dies as a result of active military duty.
3. "Active reserve duty" means participating in required meetings and annual training in a Reserve or National Guard branch of the United States uniformed service.
4. "Actuarial present value" means an amount in today's dollars of a member's future retirement benefit calculated using appropriate actuarial assumptions and the:
   a. Member's current years of credited service to the nearest month;
   b. Member's age to the nearest day;
   c. Amount of service credit the member wishes to purchase to the nearest month, except for the calculation in R2-8-506(A)(2); and
   d. Member's current annual compensation.
5. "Authorized representative" means an individual who has been delegated the authority to act on behalf of a custodian, trustee, plan administrator, or, if applicable, a member.
6. "Current years of credited service" means the amount of credited service a member has earned or purchased, and the amount of service credit for which an Irrevocable Payroll Deduction Authorization is in effect for which the member has not yet completed payment, but does not include any current requests to purchase service credit for which the member has not yet paid.
7. "Custodian" means a financial institution that holds financial assets for guaranteed safekeeping.
8. "Direct rollover" means distribution of eligible funds made payable to the ASRS as a contribution for the benefit of an eligible member from a retirement plan listed in A.R.S. § 38-747(H)(2) or (H)(3).
9. "Eligible funds" means payments listed in A.R.S. § 38-747(H)(2) and (H)(3).
10. "Eligible member" means an active member of the Plan or a Plan member who is receiving benefits under the Long Term Disability Program established by A.R.S. Title 38, Chapter 5, Article 2.1.
11. "Forms of payment" means check, cashier's check, money order, Irrevocable Payroll Deduction Authorization, direct rollover, indirect IRA rollover, indirect rollover, trustee-to-trustee transfer, IRA rollover and termination pay distribution.
12. "Forfeited service" means credited service for which the ASRS has returned retirement contributions to the member under A.R.S. § 38-740.
13. "Immediate family member" means:
    a. A member's spouse or life partner;
    b. A member's natural, step, or adopted sibling;
    c. A member's natural, step, or adopted child;
    d. A member's natural, step, or adoptive parent; or
    e. An individual for whom the member has legal guardianship.

14. “Indirect IRA rollover” means funds already distributed to the eligible member from a retirement plan listed in A.R.S. § 38-747(H)(3) that are then paid by the eligible member to the ASRS as a contribution for the benefit of the eligible member.
15. “IRC” means the same as “Internal Revenue Code” in A.R.S. § 38-711(18).
16. “Irrevocable Payroll Deduction Authorization” means an irrevocable contract between an eligible member, an ASRS employer, and the ASRS that requires the ASRS employer to withhold payments from a member’s pay for a specified amount and for a specified number of payments, as provided in A.R.S. § 38-747.
17. “Life partner” means an individual who lives with a member as a spouse, but without being legally married.
18. “Military Call-up” means a member is called to active duty in a branch of the United States uniformed services.
19. “Military service” means active duty or active reserve duty with any branch of the United States uniformed services or the Commissioned Corps of the National Oceanic and Atmospheric Administration.
20. “Military service record” means a United States uniformed services or National Oceanic and Atmospheric Administration document that provides the following information:
    a. The member’s full name;
    b. The member’s Social Security number;
    c. Type of discharge the member received; and
    d. Active duty dates, if applicable; or
    e. Active reserve duty dates, if applicable; and
    f. Point history for reserve duty dates, if applicable.
21. “Other public service” means previous employment listed in A.R.S. § 38-743(A).
22.. “PDA pay-off letter” means written correspondence from the ASRS to a member that specifies the amount necessary to be paid by the member to complete an Irrevocable Payroll Deduction Authorization and receive the credited service specified in the Irrevocable Payroll Deduction Authorization.
23. “Plan Administrator” means the person authorized to represent a specific eligible plan as addressed in IRC § 414(g).
24. “Service credit” means forfeited service under A.R.S. § 38-742, leave of absence under A.R.S. § 38-744, military service and Military Call-up service under A.R.S. § 38-745, and other public service under A.R.S. § 38-743 that an eligible member may purchase.
25. “SP invoice” means a written correspondence from the ASRS informing an eligible member of the amount of money required to purchase a specified amount of service credit.
26. “Termination pay distribution” means an ASRS employer’s payment to the ASRS of an eligible member’s termination pay to purchase service credit as specified in A.R.S. § 38-747(B)(2).
27. “Three full calendar months” means the first day of the first full month through the last day of the third consecutive full month.
28. “Transfer employment” means to terminate employment with one ASRS employer with which a member has an Irrevocable Payroll Deduction Authorization:
    a. After accepting an offer to work for a new ASRS employer, or
    b. While working as an active member for a different ASRS employer.
29. “Trustee-to-trustee transfer” means a transfer of assets to the ASRS as authorized in A.R.S. § 38-747(I), from a retirement program listed in R2-8-515(A) from which, at the time of the transfer, a member is not eligible to receive a distribution.
30. “Uniformed services” means the United States Army, Army Reserve, Army National Guard, Navy, Navy Reserve, Air Force, Air Force Reserve, Air Force National Guard, Marine Corps, Marine Corps Reserve, Coast Guard, Coast Guard Reserves, and the Commissioned Corps of the Public Health Service.
31. “Window credit” means overpayments made on previously purchased service credit by eligible members of the ASRS as provided by Laws 1997, Ch. 280, § 21, and Laws 2003, Ch. 164, § 3.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4). Amended by final rulemaking at 19 A.A.R. 764, effective June 1, 2013 (Supp. 13-2). Amended…

**R2-8-502. Request to Purchase Service Credit and Notification of Cost**

A. An eligible member may request to purchase service credit verbally, in writing, or electronically. The eligible member shall provide the eligible member’s mailing address and designate which category of service credit the eligible member is requesting to purchase.

B. The ASRS shall send a letter acknowledging the request to purchase service credit to the mailing address provided by the eligible member. The ASRS shall provide, with the acknowledgment letter, any form specified in this Article that corresponds to the category of service credit the eligible member requests to purchase and indicate in the acknowledgment letter the deadline for providing supporting documentation of service credit to the ASRS.

C. Except as provided in R2-8-519(A), the eligible member shall provide documentation of service credit as required by this Article within 90 days of the eligible member’s request to purchase service credit. If the ASRS has not received complete

and correct documents within 90 days of the request to purchase service credit, the ASRS shall cancel the eligible member's request to purchase service credit. The eligible member may make a new request to purchase service credit.

D. Upon receipt of the documentation required by this Article from the eligible member and if the eligible member's request to purchase service credit meets the requirements of this Article, the ASRS shall provide the following to the eligible member:
   1. A SP invoice stating the cost to purchase the amount of service credit the member is eligible to purchase and the date payment is due;
   2. A Service Purchase Payment Request form requesting the following information:
      a. The member's name;
      b. The member's Social Security number;
      c. The member's mailing address;
      d. The member's daytime telephone number;
      e. ID number listed on the SP invoice;
      f. Either the number of years or partial years of service credit the member wishes to purchase or the cost for the number of years or partial years of service the member wishes to purchase, not exceeding the years or partial years and cost specified on the SP Invoice;
      g. If the member elects to pay for the service credit by trustee-to-trustee transfer, IRA rollover, distributed rollover contribution, or direct rollover, the anticipated number of rollovers or transfers;
      h. If the member elects to pay by Irrevocable Payroll Deduction Authorization, the amount of money the member wishes to pay per pay period;
      i. If the member elects to pay for the service credit by check, the check number and amount of the check;
      j. If the member elects to pay any cost remaining at retirement or termination of employment with a termination pay distribution, the retirement date or last date of work;
      k. The member's signature and date of the signature; and
   3. Other forms the member may need to complete the request for service credit purchase.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4).

**R2-8-503. Requirements Applicable to All Service Credit Purchases**

A. To purchase service credit at the amount provided in an SP invoice, an eligible member shall purchase the service credit by check or money order, or request an Irrevocable Payroll Deduction Authorization, rollover, transfer or termination pay distribution as specified in this Article, by the due date specified on the SP invoice.

B. An eligible member may purchase all of the service credit or a portion of the service credit. If the eligible member wishes to purchase only a portion of the service credit, the eligible member shall specify, on the Service Purchase Payment Request form identified in R2-8-502(D)(2):
   1. The dollar amount the eligible member wishes to purchase, up to the amount specified on the SP invoice, or
   2. The number of years or partial years the eligible member wishes to purchase, not exceeding the years or partial years specified on the SP invoice.

C. If the eligible member elects to purchase only a portion of the service credit, the cost and amount of service credit the eligible member identifies on the Service Purchase Payment Request form is only an estimate and may be more or less than the actual cost or amount of service credit purchased by the eligible member.

D. The eligible member shall not request to purchase additional service credit based on the SP invoice until the member has completed the purchase of the previously requested portion of service credit or cancel the request as specified in subsection (F).

E. ASRS shall not consider more than one active request at a time from a member to purchase service credit in a single category. The categories are:
   1. Leave of absence,
   2. Military service,
   3. Presidential Call-up service,
   4. Forfeited service, and
   5. Other public service.

F. An eligible member may cancel an active request to purchase a specific category of service credit verbally or in writing, and submit a new request in the same category of service credit for a different amount of service credit.

G. If an eligible member is entitled to a window credit, the eligible member may apply the window credit to purchase service credit. To apply a window credit to a purchase of service credit, the eligible member shall make a request to the ASRS in writing by the due date specified on the SP invoice and include the following information:
   1. The amount the member wants to apply,
   2. The member's signature, and
   3. The date of the member's signature.

H. The amount of service credit an eligible member may purchase and the benefits an eligible member may receive are subject to the limitations prescribed in A.R.S. § 38-747(E).

I. On or before the due date specified on the SP Invoice, ASRS shall extend the time for an eligible member to respond to an SP invoice as follows:
   1. If the member notifies the ASRS of an ASRS error, the time is extended 30 days after the date the ASRS sends notification to the eligible member that the ASRS has corrected the error;
   2. If an ASRS internal review is made of the member's service credit purchase request, the time is extended 30 days after the date ASRS sends notification to the member that the review is completed;
   3. If the member appeals an issue regarding the SP invoice under Article 4 of this Chapter, the time is extended 30 days after the date ASRS sends notification to the member that a decision on the appeal has been made; or
   4. If an unforeseeable event occurs that is outside of the member's control, such as an incapacitating illness of the member or death of an immediate family member, and the member notifies the ASRS of the event, the ASRS shall extend the time by up to six months, after a review of the unforeseeable event to determine the length of the extension.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4).

**R2-8-504. Service Credit Calculation for Purchasing Service Credit**

An eligible member who purchases service credit shall receive one month of credited service for one or more days of service in a calendar month.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2).

**R2-8-505. Restrictions on Purchasing Overlapping Service Credit; Transfers**

A. The ASRS shall not permit an eligible member to purchase service credit that, when added to credited service earned in any plan year, results in more than:
   1. One year of credited service in any plan year, or
   2. One month of credited service in any one calendar month.

B. The restrictions in subsection (A) do not apply to service credit that an eligible member transfers from another retirement system to the ASRS as authorized in A.R.S. § 38-730 or A.R.S. Title 38, Chapter 5, Article 7, whether the eligible member requests the transfer before or after purchasing other service credit.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2).

**R2-8-506. Cost Calculation for Purchasing Service Credit**

A. For leave of absence service credit, military service credit, and other public service credit, the ASRS shall calculate, as of the date of the request to purchase service credit:
   1. The actuarial present value of the future retirement benefit for the member including the service credit that the eligible member requests to purchase, and
   2. The actuarial present value of the future retirement benefit for the member without the service credit that the eligible member requests to purchase.

B. The cost for purchasing the service credit that the member requests to purchase is the difference between the actuarial present value in subsection (A)(1) and the actuarial present value in subsection (A)(2).

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2).

**R2-8-507. Required Documentation and Calculations for Forfeited Service Credit**

A. An eligible member who requests to purchase service credit for forfeited service under A.R.S. § 38-742 shall provide to the ASRS:
   1. The eligible member's:
      a. Full name and, if applicable, other names used while working for an ASRS employer for which the eligible member is requesting to purchase service credit;
      b. Mailing address;
      c. Telephone number, if applicable;
      d. Social Security number;
   2. The name of each ASRS employer, if known, for which the eligible member is requesting to purchase service credit for forfeited service;
   3. The year the eligible member began working for each ASRS employer and the year the eligible member left each employment, if known; and
   4. The year the eligible member believes the ASRS returned retirement contributions to the member.

B. The amount the eligible member shall pay to purchase service credit for previously forfeited service is the amount of retirement contributions that the ASRS returned to the eligible member, plus interest on that amount from the date on the

return of retirement contributions check to the date of redeposit at the interest rate determined by the Board as specified in A.R.S. § 38-742.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4).

**R2-8-508. Required Documentation and Calculations for Leave of Absence Service Credit**

A. An eligible member may request to purchase service credit for an approved leave of absence from an ASRS employer under A.R.S. § 38-744. To request to purchase service credit for an approved leave of absence the eligible member shall provide to the ASRS:

1. An Approved Leave of Absence form that includes:
   a. The following information completed by the eligible member:
      i. The eligible member's full name and, if applicable, other names used while working for the ASRS employer;
      ii. The eligible member's Social Security number;
      iii. The eligible member's mailing address;
      iv. The eligible member's daytime telephone number;
      v. A statement that the eligible member understands that up to one year of leave of absence service credit may be purchased for each approved leave of absence, if the eligible member returns to work for the employer that approved the leave of absence unless employment could not be resumed because of disability or nonavailability of a position;
      vi. A statement that the eligible member understands that the ASRS uses the actuarial present value calculation method to determine the cost of the service purchase request;
      vii. A statement that the eligible member authorizes the ASRS employer to provide any necessary personal information to ASRS in order to process this request; and
      viii. The member's dated signature; and
   b. The following information completed by the ASRS employer;
      i. The beginning date and ending date of the approved leave of absence;
      ii. The date the eligible member returned to work or a statement of why employment was not resumed;
      iii. Name of the employer;
      iv. The authorized employer representative's name;
      v. The authorized employer representative's telephone number and, if applicable, fax number; and
      vi. The authorized employer representative's dated signature verifying that the approved leave of absence benefited or was in the best interest of the employer; and
2. A copy of the guidelines referenced in A.R.S. § 38-744, if applicable.

B. The amount the member shall pay to purchase service credit for leave of absence is determined as provided in R2-8-506.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4).

**R2-8-509. Required Documentation and Calculations for Military Service Credit**

A. An eligible member may request to purchase military service credit under A.R.S. § 38-745(A) and (B). To request to purchase military service credit, the eligible member shall provide to the ASRS:

1. The items listed in R2-8-507(A)(1);
2. A copy of the eligible member's military service record; and
3. A completed, signed, dated, and notarized Affidavit of Military Service form that contains:
   a. The member's full name;
   b. The member's Social Security number;
   c. The branch of the uniformed services the member was in;
   d. Whether the member was active duty or active reserve duty;
   e. The years and months by fiscal year that the member was in active duty or active reserve duty for which the member wishes to purchase service credit;
   f. Acknowledgement that the member has attached:
      i. Proof of honorable discharge for each type of military service listed on the form; and
      ii. The member's military service record that supports all of the service listed on the affidavit;
   g. The following statements of understanding initialed by the member:
      i. I understand that any person who knowingly makes any false statement or who falsifies or permits to be falsified any record of the retirement plan with an intent to defraud the plan is guilty of a class 6 felony per Arizona Revised Statutes Section 38-793;
      ii. I understand this transaction is subject to audit and if any errors or misrepresentations are discovered as a result of this audit, my total credited service with the ASRS will be adjusted as necessary and if I am retired, my retirement benefit will also be adjusted;

iii. I understand that the service listed on this affidavit does not include time that I either volunteered or was ordered into active duty military service as part of a Presidential Call-up. This service is purchased under Presidential Call-up and requires a Presidential Call-up form to be completed by your employer; and

iv. I understand that any time I have listed on this affidavit for Reserve or National Guard time reflects the months that I attended at least one drill or assembly for each month listed.

B. The amount the eligible member pays to purchase military service credit is determined as provided in R2-8-506.

C. ASRS determines the amount of service credit an eligible member receives for active duty and active reserve duty time by the time listed on the Affidavit of Military Service form, if the service listed is supported by the information contained in the member's military service record.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4).

**R2-8-510. Required Documentation and Calculations for Presidential Call-up Service Credit**

A. An eligible member or the eligible member's beneficiary who meets the requirements under A.R.S. § 38-745(C) shall receive up to 60 months of Presidential Call-up service under A.R.S. § 38-745(C) through (I). In order to determine the amount of contributions the ASRS employer owes to purchase service credit for Presidential Call-up service, the eligible member's ASRS employer shall provide to the ASRS a copy of the eligible member's military service record and a completed Military Call-up form that includes the following:

1. The member's full name;
2. The member's Social Security number;
3. The start date of Presidential Call-up Service;
4. The end date of Presidential Call-up Service;
5. Whether the member received paid leave while on Presidential Call-up;
6. The date the member returned to work for the ASRS employer;
7. The salary for each fiscal year while the member is on Presidential Call-up, including any salary increases the eligible member would have received had the member not left employment due to Presidential Call-up, if applicable;
8. The ASRS employer's name and address;
9. The name of a contact individual for the ASRS employer, and that individual's business and fax telephone numbers;
10. The contact individual's signature and date of signature;
11. If applicable, the earlier of:
    a. The date that the member was released from the hospital for injuries sustained as a result of participating in a Presidential Call-up; or
    b. The date that the member was hospitalized for one year for injuries sustained as a result of participating in a Presidential Call-up; and
12. A copy of the member's death certificate, if applicable.

B. An ASRS employer shall make the request to purchase service credit for Presidential Call-up service within 30 days after the member's active duty termination date.

C. The ASRS calculates the amount the ASRS employer pays to purchase Presidential Call-up service by multiplying the eligible member's salary at the time active duty commences, by the contribution rate in effect for the period of active duty, and by the years or partial years of service elapsing from the active duty commencement date through the active duty termination date. Included in the calculation are any salary increases the member would have received if the member had not left work to participate in a Presidential Call-up.

D. The ASRS shall send the ASRS employer a statement of cost for purchase of the Presidential Call-up service credit, based on the calculation in subsection (B). Within 90 days from the date on the ASRS statement of cost, the ASRS employer shall pay to the ASRS the amount on the statement. If the ASRS employer fails to make full payment within the 90 days, interest shall accrue on the unpaid balance at the assumed actuarial investment earnings rate approved by the Board in effect on the date of the statement of cost.

E. If an ASRS employer deducts retirement and long-term disability contributions from an eligible member's pay while the eligible member is on Presidential Call-up service, the ASRS shall return the contributions to the ASRS employer after the ASRS receives the information in subsection (A).

F. If an ASRS employer deducts retirement contributions from an eligible member's pay while the eligible member is on Presidential Call-up service, and the eligible member does not return to the ASRS employer after separation from active military service, the ASRS shall apply the retirement contributions to the member's credited service.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4).

**R2-8-511. Required Documentation and Calculations for Other Public Service Credit**

A. An eligible member who requests to purchase other public service credit under A.R.S. § 38-743 shall provide to the ASRS a completed Affidavit of Other Public Service form, signed and dated by the member, and notarized, that includes the following:

1. The member's full name;
2. The member's Social Security number;
3. Other names used by the member during employment with the other public service employer, if applicable;
4. The name and mailing address of the other public service employer;
5. The position the member held while working for the other public service employer;
6. A contact name and telephone number of an individual in the other public service employer's human resources department who can verify employment, if known;
7. The years and months by fiscal year of other public service the member worked and wishes to purchase;
8. If the other public service employer was a non-ASRS employer, a statement of whether the member participated in the non-ASRS employer's retirement plan;
9. If the member participated in a non-ASRS public service employer's retirement plan, the name of the retirement plan, identifying whichever one of the following applies:
   a. The approximate date the member took a return of retirement contributions;
   b. The plan is non-contributory and the member is not eligible for benefits from the plan; or
   c. That, if not using all of the retirement contributions as a pre-tax rollover, the member will request a return of retirement contributions and forfeit all rights to any benefits from the plan and provide the ASRS with documentation that the member has forfeited all rights to benefits from the plan no later than the due date specified on the SP invoice; and
10. Acknowledgement that:
   a. Knowingly making a false statement or falsifying or permitting falsification of any record of the ASRS with an intent to defraud ASRS is a Class 6 felony, pursuant to A.R.S. § 38-793;
   b. The service purchase transaction is subject to audit and if any errors are discovered, the ASRS shall adjust a member's total credited service with the ASRS, or if the member is already retired, adjustments to the member's credited service will affect the member's retirement benefit; and
   c. If an audit determines that the member is eligible for a benefit from the other public service employer's retirement plan, the member is required to take necessary steps to forfeit the benefit, and if the forfeiture is not completed within 90 days of being notified of the audit results, the service credit purchase listed on this application will be revoked and any funds paid to purchase the service credit will be refunded to the member.

B. The amount the member shall pay to purchase other public service credit is determined as provided in R2-8-506.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4).

**R2-8-512. Purchasing Service Credit by Check, Cashier's Check, or Money Order**

A. An eligible member may purchase service credit by check, cashier's check, or money order.

B. Within 30 days of the issue date on the SP invoice or PDA pay-off letter, the member shall ensure that the ASRS receives the completed Service Purchase Payment Request form with the information specified in R2-8-502(D)(2) and a check, cashier's check, or money order made to the order of the Arizona State Retirement System in the amount to purchase the requested service credit.

C. If an eligible member purchases service credit by check, cashier's check, or money order in conjunction with one or more rollovers, trustee-to-trustee transfers, or termination pay, the member shall make payment within 30 days after the date the ASRS sends written confirmation that the ASRS received the final rollover, trustee-to-trustee transfer, or termination pay payment.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4).

**R2-8-513. Purchasing Service Credit by Irrevocable Payroll Deduction Authorization**

A. An eligible member may purchase service credit by Irrevocable Payroll Deduction Authorization.

B. By the due date specified on the SP invoice, the member shall ensure that the ASRS receives the completed Service Purchase Payment Request form with the information specified in R2-8-502(D)(2).

C. If the eligible member elects to pay for service credit by Irrevocable Payroll Deduction Authorization, ASRS shall prepare an Irrevocable Payroll Deduction Authorization and send it to the eligible member for signature. The member shall ensure that the ASRS receives the signed Irrevocable Payroll Deduction Authorization within 30 days after the date on the Irrevocable Payroll Deduction Authorization. The signed Irrevocable Payroll Deduction Authorization becomes irrevocable upon receipt by the ASRS.

D. At the time the eligible member signs the Irrevocable Payroll Deduction Authorization the eligible member may elect to use termination pay towards the balance of the Irrevocable Payroll Deduction Authorization if the eligible member terminates employment. If the eligible member chooses this option, the eligible member shall complete the Termination Pay Addendum to the Irrevocable Payroll Deduction Authorization and return it to the ASRS along with the remainder of the Irrevocable Payroll Deduction Authorization that includes the following:
   1. A statement that the member:

a. Understands and agrees that the member must continue working at least three full calendar months after the date of submission of the form before termination pay may be used on a pre-tax basis;
b. Understands that if the termination payment exceeds the balance owed on the Irrevocable Payroll Deduction Authorization, the overage will be returned to the ASRS employer to be distributed to the member; and
c. Elects to irrevocably agree to have termination pay that may be payable to the member upon termination of employment sent to the ASRS on a pre-tax basis and used toward any remaining balance of the Irrevocable Payroll Deduction Authorization if all scheduled payroll deductions have not been completed upon termination of service; and

2. A statement that either all termination pay or a specified amount of termination pay is to be applied to the balance of the Irrevocable Payroll Deduction Authorization.

E. The ASRS shall:
1. Charge interest on the unpaid balance at the assumed actuarial investment earnings rate approved by the Board in effect at the time the authorization was entered into;
2. Limit the payroll deduction time period to a maximum of 20 years; and
3. Require a minimum payment of $10.00 per payroll period, or payment in an amount to purchase at least .001 year of service credit per payroll period, whichever is greater.

F. The ASRS shall transmit the Irrevocable Payroll Deduction Authorization to the active member's ASRS employer, and the ASRS employer shall implement the deduction on the first pay period after receiving the Irrevocable Payroll Deduction Authorization.

G. If a deduction is not made under an Irrevocable Payroll Deduction Authorization within six months after the member signs the authorization, the authorization lapses and the member may make another request, which is recalculated based on the new request date unless the failure to begin deductions is due to an ASRS error.

H. A period of leave of absence, long-term disability, or Presidential Call-up shall not cancel the Irrevocable Payroll Deduction Authorization. The ASRS employer shall resume deductions immediately upon the member's return to that employment. The period during which the member is on leave of absence, on long-term disability, or leaves work because of a Presidential Call-up is not included in the 20-year payment time limitation under subsection (E)(2). If the member does not return to active working status, whether due to termination of employment or retirement, the member may elect to purchase the balance of unpaid service under the Irrevocable Payroll Deduction Authorization at the time of termination or retirement as specified in this Section.

I. Deductions made pursuant to an Irrevocable Payroll Deduction Authorization continue until the:
1. Irrevocable Payroll Deduction Authorization is completed;
2. Member retires, whether or not the member continues employment as allowed in A.R.S. §§ 38-766.01 and 38-764(J); or
3. Member terminates all ASRS employment without transferring employment.

J. If a member retires or terminates employment from all ASRS employers without transferring employment as stated in R2-8-513.01 before all deductions are made as authorized by the Irrevocable Payroll Deduction Authorization, the member's purchase of service credit is canceled unless the member notifies the ASRS in writing during the period 14 days before to 14 days after retirement or termination from all ASRS employment of the intent to purchase the remaining amount due in a lump sum.

K. When the member notifies ASRS of retirement or termination from all ASRS employment and requests to pay off the Irrevocable Payroll Deduction Authorization, the ASRS shall send the member a PDA pay-off letter to the mailing address given by the member. The ASRS shall calculate the amount owed by the member and reduce the amount owed by any excess interest that the member has paid.

L. Within 30 days of the date of the PDA pay-off letter, the member shall ensure that the ASRS receives the completed SP Payment Request form with the information specified in R2-8-502(D)(2). The member may purchase the remaining service credit by one or more of the following methods:
1. By check, cashier's check, or money order made out to the ASRS under R2-8-512;
2. By making a request to the ASRS for a rollover or transfer under R2-8-514 and completing the rollover or transfer within 90 days of the date of the PDA pay-off letter; or
3. By termination pay distribution under R2-8-519, if the member authorized this option at the time the member signed the Irrevocable Payroll Deduction Authorization.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4).

**R2-8-513.01. Irrevocable Payroll Deduction Authorization and Transfer of Employment to a Different ASRS Employer**

A. An Irrevocable Payroll Deduction Authorization continues if a member transfers employment.

B. An Irrevocable Payroll Deduction Authorization ends if a member terminates employment without having accepted an offer to work for a new ASRS employer, and the member is not already an active member working for a different ASRS employer. The member shall then pay off the Irrevocable Payroll Deduction Authorization as specified in R2-8-513(J).

C. If a retirement contribution is due from the new ASRS employer within 120 days from the member's termination date with the previous employer, there is a rebuttable presumption that there is a transfer of employment. If a retirement contribution is not received within 120 days, the Irrevocable Payroll Deduction Authorization terminates.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4).

**R2-8-513.02 Termination Date**

For the purpose of an Irrevocable Payroll Deduction Authorization, the date a member is considered terminated from an ASRS employer is:

1. For a member terminating employment, the member's last pay period end date with that ASRS employer;
2. For a member on Presidential Call-up who does not return to the same ASRS employer:
   a. Ninety days from the date of separation from Presidential Call-up service;
   b. Ninety days from the date released from the hospital, if injured while on Presidential Call-up service;
   c. The date the member has been hospitalized for one year for injuries sustained as a result of participating in a Presidential Call-up; or
   d. The date of the member's death as a result of participating in a Presidential Call-up;
3. For a member on leave of absence without pay who does not return to the same ASRS employer, the date the ASRS employer required the member to return to work;
4. For a member who is unable to work because of a disability, the later of:
   a. The date the member's request for long-term disability benefits are denied;
   b. The date the member no longer has sick leave and annual leave; or
   c. For a member on long-term disability who does not return to the same ASRS employer or transfer employment, the date long-term disability benefits are terminated.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4).

**R2-8-514. Purchasing Service Credit by Direct Rollover**

A. An eligible member may purchase service credit or pay off an Irrevocable Payroll Deduction Authorization by direct rollover at retirement or termination of employment without transferring employment.

B. By the due date specified on the SP invoice, the member shall ensure that the ASRS receives the completed Service Purchase Payment Request form with the information specified in R2-8-502(D)(2).

C. Upon receipt of the completed Service Purchase Payment Request form, the ASRS shall provide a Direct Rollover/Transfer Certification to Purchase Service Credit form, if the ASRS has not already provided the member with the form.

D. The member shall ensure that the ASRS receives the Direct Rollover/Transfer Certification to Purchase Service Credit form completed by the member and the plan making the distribution within 90 days after the issue date of the SP Invoice.

E. The information requested on the Direct Rollover/Transfer Certification to Purchase Service Credit form includes:

1. Member's full name;
2. Member's Social Security number;
3. Member's mailing address;
4. Member's daytime telephone number;
5. The amount of each rollover or transfer, if applicable;
6. The account number of each plan, if applicable;
7. The member's signature certifying that the member understands the requirements, limitations, and entitlements for the rollover/transfer that is being used to purchase service credit, and has read and understands the Direct Rollover/Transfer Certification to Purchase Service Credit form and any accompanying instructions and information sheets;
8. The date the member signs the form;
9. The authorized representative's name and title;
10. The authorized representative's address;
11. The authorized representative's telephone number;
12. Certification by the authorized representative that:
    a. The plan is either:
       i. A qualified pension, profit sharing, or 401(k) plan described in IRC § 401(a), or a qualified annuity plan described in IRC § 403(a);
       ii. A deferred compensation plan described in IRC § 457(b) maintained by a state of the United States, a political subdivision of a state of the United States, or an agency or instrumentality of a state of the United States;
       iii. An annuity contract described in IRC § 403(b); or
       iv. An IRA described in A.R.S. § 38-747(H)(3);
    b. The rollover/transfer specified on the form from which the pre-tax funds are being rolled over or transferred is intended to satisfy the requirements of the applicable section of the Internal Revenue Code;
    c. The authorized representative is not aware of any plan provision or any other reason that would cause the plan/IRA not to satisfy the applicable section of the Code; and

d. The funds will be sent to the ASRS as a direct plan rollover, IRA rollover, or a trustee-to-trustee transfer; and

13. The date and signature of the authorized representative.

F. The ASRS shall provide the member with written notification regarding the eligibility of the rollover.

G. The member shall contact the plan administrator to have the funds distributed and transferred to the ASRS. Except as provided in subsection (H), unless the ASRS receives a check for the correct amount from the plan within 90 days of the issue date on the SP invoice, the ASRS shall cancel the request to purchase service credit as specified in R2-8-502(C).

H. At the written request of the member, the ASRS shall provide an extension of 60 days in which the check may be received by the ASRS from the plan at the written request of the member, if:

1. The member has followed the procedure in this Article for requesting to purchase service credit,
2. The member has responded to the ASRS correspondence within the time-frame set forth in this Article,
3. The eligible plan has not provided to the ASRS the check to pay for the requested service credit purchase within 90 days of the date of the SP invoice, and
4. The member makes the written request for extension before expiration of the 90 days.

I. The member shall ensure that the ASRS receives a check from the plan, made payable to the ASRS, for an amount that does not exceed the amount specified on the SP Invoice.

J. If the payment from the eligible plan exceeds the amount specified on the SP Invoice, the ASRS shall return the entire payment to the member.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4).

**R2-8-515. Purchasing Service Credit by Trustee-to-Trustee Transfer**

A. An eligible member may purchase service credit or pay off an Irrevocable Payroll Deduction Authorization at retirement or termination of employment without transferring employment by a trustee-to-trustee transfer if the member participates in:

1. A deferred compensation plan described in IRC § 457 that is maintained by:
   a. The state of Arizona;
   b. A political subdivision, agency, or instrumentality of the state of Arizona; or
   c. A political subdivision entity of the state of Arizona;
2. An annuity contract described in IRC § 403(b); or
3. A retirement program qualified under IRC § 401(a) or 403(a).

B. By the due date specified on the SP invoice, the ASRS shall receive from the member the completed Service Purchase Payment Request form described in R2-8-502(D)(2).

C. Upon receipt of the completed Service Purchase Payment Request form, the ASRS shall provide a Direct Rollover/Transfer Certification to Purchase Service Credit form, if the ASRS has not already provided the member with the form.

D. The member shall ensure that the member and the plan administrator complete the Direct Rollover/Transfer Certification to Purchase Service Credit form, containing all of the applicable information identified in R2-8-514(E), and ensure that the ASRS receives the form within 90 days after the issue date on the SP Invoice.

E. The ASRS shall provide the member with written notification regarding the eligibility of the transfer.

F. The member shall contact the plan administrator to have the funds transferred to the ASRS. Except as provided in subsection (G), unless the ASRS receives the check for the correct amount from the plan within 90 days of the issue date on the SP invoice, the ASRS shall cancel the request to purchase service credit as specified in R2-8-502(C).

G. The ASRS shall provide an extension of 60 days in which the check may be received by the ASRS from the plan at the written request of the member, if:

1. The member has followed the procedure under this Article for requesting to purchase service credit,
2. The member has responded to the ASRS correspondence within the time-frame set forth in this Article,
3. The eligible plan has not provided to the ASRS the check to pay for the requested service credit purchase within 90 days of the date of the SP invoice, and
4. The member makes the written request for extension before expiration of the 90 days.

H. The member shall ensure that the ASRS receives a check from the plan, made payable to the ASRS, for an amount that does not exceed the amount specified on the SP Invoice.

I. If the payment from the eligible plan exceeds the amount specified on the SP Invoice, the ASRS shall return the entire payment to the member and notify the member of the correct amount due.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4).

**R2-8-516. Purchasing Service Credit by Indirect IRA Rollover**

A. An eligible member may purchase service credit, or pay off an Irrevocable Payroll Deduction Authorization at retirement or termination of employment without transferring employment, by an indirect IRA rollover if the rollover purchase is completed within 60 days of the date of distribution of funds from the IRA account, as required by IRC § 408(d)(3)(A). The 60-day time limitation is exclusive of any other time limitations prescribed in this Article and the ASRS shall not extend the 60-day period.

B. By the due date specified on the SP invoice, the member shall ensure that the ASRS receives the completed Service Purchase Payment Request form described in R2-8-502(D)(2).

C. Upon the receipt of the completed Service Purchase Payment Request form and upon the member's request, the ASRS shall provide to the member an Indirect IRA Rollover Contribution form. The member shall complete the Indirect IRA Rollover Contribution form and ensure that the ASRS receives the form within 90 days after the issue date on the SP Invoice, along with:

1. A copy of the distribution statement or check stub identifying it as an IRA distribution, showing the date of distribution and amount distributed; or
2. The distribution check endorsed by the member made payable to the ASRS with documentation that it is an IRA distribution.

D. The information requested on the Indirect IRA Rollover Contribution form includes:

1. The member's full name,
2. The member's Social Security number,
3. The member's mailing address,
4. The member's daytime telephone number,
5. The member's signature certifying that the member understands the statements on the form regarding the distribution the member has received from the IRA and the requirements for an IRA rollover to the ASRS and agrees to the statements, and
6. The date the member signs the form.

E. The ASRS shall provide the member with written notification regarding the eligibility of the rollover contribution.

F. After receiving notice from the ASRS that the rollover is an eligible rollover contribution, if the member has not sent payment for the purchase of service credit, the member shall submit payment for the service credit purchase. The member shall make payment by:

1. The distribution check from the IRA made payable to the member and endorsed by the member to make it payable to the ASRS; or
2. Direct payment by the member by check or money order to the ASRS, after the IRA distribution is deposited to the member's account.

G. Except as provided in subsection (H), unless the ASRS receives payment from the member within 90 days of the issue date on the SP invoice, the ASRS shall cancel the request to purchase service credit as specified in R2-8-502(C).

H. The ASRS shall provide an extension of 60 days in which the check may be received by the ASRS under subsection (G) at the written request of the member, if:

1. The member has followed the procedure under this Article for requesting to purchase service credit,
2. The member has responded to the ASRS correspondence within the time-frame set forth in this Article,
3. The eligible plan has not provided the member with the check to pay for the requested service credit purchase within 90 days of the date of the SP invoice, and
4. The member makes the written request for extension before expiration of the 90 days.

I. The member shall ensure that the ASRS receives a check made payable to the ASRS for an amount that does not exceed the amount specified on the SP Invoice.

J. If the payment exceeds the amount specified on the SP Invoice, the ASRS shall return the entire payment to the member.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4).

**R2-8-517. Purchasing Service Credit by Distributed Rollover Contribution**

A. An eligible member may purchase service credit with a distribution from a prior employer's eligible plan that has already been distributed to the member if the rollover purchase is completed within 60 days of the date of distribution to the member, as required by IRC §§ 402(c)(3)(A), 403(b)(8)(B), and 457(e)(16)(B). The 60-day time limitation is exclusive of any other time limitations prescribed in this Article, and the ASRS shall not extend the 60-day period. Eligible plans are:

1. A pension, profit sharing, or other qualified plan described in IRC § 401(a) and (k);
2. A qualified annuity plan described in IRC § 403(a);
3. A deferred compensation plan described in IRC § 457 and maintained by a state of the United States, or a political subdivision, agency, or instrumentality of a state of the United States; and
4. A tax deferred annuity described in IRC § 403(b).

B. By the due date specified on the SP invoice, the member shall ensure that the ASRS receives the completed Service Purchase Payment Request form described in R2-8-502(D)(2).

C. When the ASRS receives the completed Service Purchase Payment Request form and upon the member's request, the ASRS shall provide a Certification by Eligible Plan Rollover Contribution form and Rollover Contribution form.

D. The information requested on the Certification by Eligible Plan Rollover Contribution form includes:

1. The member's dated signature;
2. Member's full name;
3. Member's Social Security number;
4. Member's mailing address;

5. Certification by the plan administrator that the plan is one of the plans described in subsection (A);
6. Certification by the plan administrator that:
    a. If the plan is described in either IRC § 401(a) or 403(a), the plan has received a determination letter from the Internal Revenue Service indicating that the plan is qualified under either IRC § 401(a) or 403(a);
    b. If the plan is described in either IRC § 401(a) or 403(a), but has not received a determination letter from the Internal Revenue Service, the plan satisfies the requirements of IRC § 401(a) or 403(a) or is intended to satisfy the requirements of IRC § 401(a) or 403(a) and the plan administrator is not aware of any plan provision or any other reason that would disqualify the plan; or
    c. If the plan is a deferred compensation plan described in IRC § 457 or an annuity contract described in IRC § 403(b), the plan or annuity satisfies the applicable requirements of IRC § 457 or 403(b) and the plan administrator is not aware of any plan provision or any other reason that would cause the plan or annuity to not satisfy the applicable provisions of IRC § 457 or 403(b);
7. Certification by the plan administrator that the plan permits a direct rollover of an eligible rollover distribution to a defined benefit plan;
8. The full name, title, and signature of the plan administrator;
9. The plan administrator's business address and telephone number; and
10. Date of the signature of the plan administrator.

E. The information requested on the Rollover Contribution form includes:
1. The member's Social Security number;
2. The member's full name;
3. The member's mailing address;
4. The member's daytime telephone number;
5. The member's signature certifying that:
    a. The member has read the statements on the Rollover Contribution form regarding requirements for a rollover contribution, understands all the statements, and believes the statements, certifications, and any documents attached to the form to be true and correct to the best of the member's knowledge and belief; and
    b. The member understands that:
        i. The ASRS assumes no responsibility for ensuring that the member makes a timely rollover contribution to the ASRS or that the amount rolled over constitutes a valid rollover contribution;
        ii. The member accepts full responsibility for ensuring that the rollover contribution is an eligible rollover contribution before making the contribution to the ASRS;
        iii. If the ASRS accepts the rollover contribution and it is later determined that the contribution was an invalid rollover contribution, the ASRS will distribute the invalid contribution directly to the member; and
        iv. Any invalid rollover contributions returned to the member may decrease the member's benefits and the Internal Revenue Service and state taxing authorities may require the member to pay taxes, penalties, and interest on the returned contributions; and
6. The date the member signed the form.

F. The member shall ensure that the ASRS receives the Certification by Eligible Plan Rollover Contribution form signed and dated by the plan administrator, the Rollover Contribution form signed and dated by the member, and a copy of the distribution statement showing the:
1. Date of the distribution;
2. Amount of the distribution; and
3. Amount of taxes withheld, if any.

G. The ASRS shall provide the member with written notification regarding the eligibility of the rollover.

H. The member shall make payment by:
1. The distribution check from the eligible plan made payable to the member and endorsed by the member to make it payable to the ASRS; or
2. Direct payment by the member by check or money order to the ASRS, after the eligible plan distribution is deposited to the member's personal financial account.

I. Except as provided in subsection (J), unless the ASRS receives the check from the plan within 90 days of the issue date on the SP invoice, the ASRS shall cancel the request to purchase service credit as specified in R2-8-502(C).

J. At the written request of the member, the ASRS shall provide an extension of 60 days in which the check may be received by the ASRS from the plan under subsection (I), if:
1. The member has followed the procedure under this Article for requesting to purchase service credit,
2. The member has responded to the ASRS correspondence within the time-frame set forth in this Article,
3. The eligible plan has not provided to the member with the check to pay for the requested service credit purchase within 90 days of the date of the SP invoice, and
4. The member makes the written request for extension before expiration of the 90 days.

K. The member shall ensure that the ASRS receives a check, made payable to the ASRS, for an amount that does not exceed the amount specified in the written notification identified in subsection (G).

L. If the payment from the eligible plan exceeds the amount specified in the written notification identified in subsection (G) the ASRS shall return the entire payment to the member.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4).

**R2-8-518. Repealed**

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Repealed by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4).

**R2-8-519. Purchasing Service Credit by Termination Pay Distribution**

A. To purchase service credit using termination pay distribution, an eligible member shall, no more than six months before the date the eligible member plans to retire or terminate employment, request to purchase service credit as specified in R2-8-502 and specify that the member wants to use termination pay distribution to pay for the service credit. Upon receipt of the acknowledgement letter identified in R2-8-502, the eligible member shall provide documentation for service credit as required by this Article, within 30 days of the eligible member's request to purchase service credit.

B. Upon receipt of the documentation required by this Article from the eligible member and if the eligible member's request to purchase service credit meets the requirements of this Article, the ASRS shall provide a:
   1. SP invoice stating the cost to purchase the requested amount of service credit and the date the payment is due, and
   2. Service Purchase Payment Request form as described in R2-8-502(D)(2).

C. By the due date specified on the SP invoice, the member shall ensure that the ASRS receives the completed Service Purchase Payment Request form.

D. Upon receipt of the Service Purchase Request form, if the member indicates the member wishes to purchase service credit by termination pay distribution, the ASRS shall send the member a Termination Pay Authorization for the Purchase of Service Credit form to complete and return within the time limitation specified in subsection (E) that includes:
   1. Member's full name,
   2. Member's Social Security number,
   3. Member's daytime telephone number,
   4. The Request ID number listed on the SP invoice,
   5. Name of ASRS employer,
   6. Whether the member elects to use all termination pay or a specific amount of termination pay to purchase service credit,
   7. Signature of the member, certifying that the member understands that:
      a. The member is required to continue working at least three full calendar months after the date the member submits the Termination Pay Authorization for the Purchase of Service Credit form before termination pay may be used on a pre-tax basis;
      b. If the member terminates employment more than six months after the date on the SP invoice, the member may purchase the service credit at a newly calculated rate and possibly at a higher cost;
      c. The Termination Pay Authorization for the Purchase of Service Credit form is binding and irrevocable;
      d. The member's employer is required to make payment directly to the ASRS after mandatory deductions are made, and the member does not have the option of receiving the funds directly from the employer;
      e. The ASRS shall apply service credit to the member's account upon the receipt of payments authorized by the member by the Termination Pay Authorization for the Purchase of Service Credit form;
      f. If the member elects to purchase with termination pay only a portion of the service credit that the member is entitled to purchase, the member may be eligible to use other forms of payment to purchase additional service credit. However, using other forms of payment to purchase additional service credit does not alter, amend, or revoke the terms of the Termination Pay Authorization for the Purchase of Service Credit form;
      g. It is the member's responsibility to ensure that the member's employer properly deducts termination pay, as provided the Termination Pay Authorization for the Purchase of Service Credit form; and
      h. The amount of termination pay the member is allowed to apply to purchase service credit is subject to federal laws.

E. In addition to the other time limitations in this Section, to apply termination pay to a service purchase the eligible member shall complete and sign the Termination Pay Authorization for the Purchase of Service Credit form, and the member shall ensure that the ASRS receives the Termination Pay Authorization for the Purchase of Service Credit form at least three full calendar months before the member retires or terminates employment.

F. The ASRS shall not apply a termination pay distribution to a service credit purchase covered by an Irrevocable Payroll Deduction Authorization in effect at the time of termination unless the eligible member signed a Termination Pay Addendum to the Irrevocable Payroll Deduction Authorization specified in R2-8-513(D) at the time the member signed the Irrevocable Payroll Deduction Authorization.

G. If a member elects to use all of the member's available termination pay to purchase service credit, ASRS shall not apply any other form of payment to the service credit purchase until the ASRS receives the termination pay.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4).

**R2-8-520. Termination of Employment and Request Return of Retirement Contributions or Death of Member While Purchasing Service Credit by an Irrevocable Payroll Deduction Authorization**

A. If a member terminates employment without transferring employment as specified in R2-8-513.01 while purchasing service credit by an Irrevocable Payroll Deduction Authorization and requests return of retirement contributions, the ASRS shall return any payments made for the purchase of service credit including interest earned on those payments as determined by the Board.

B. If a member dies while purchasing service credit, the ASRS shall credit the member's account with:

1. The service credit for which the ASRS received payment before the member's death,
2. Interest earned on payment through the date of distribution at the valuation rate established by the Board, and
3. All service purchase payments.

C. If a member dies while purchasing service credit, the ASRS shall not permit the survivor to purchase the remaining balance.

D. The ASRS shall not refund interest charged as part of an Irrevocable Payroll Deduction Authorization as specified in R2-8-513(E)(1).

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4).

**R2-8-521. Adjustment of Errors**

A. If the ASRS determines an error has been made in the information provided by the member or in the calculations made by the ASRS, the ASRS shall make an adjustment, including, but limited to, increasing or decreasing a member's total credited service with the ASRS and increasing or decreasing the payment amount.

B. If the ASRS determines that a member is receiving or is eligible to receive retirement benefits from another public employee retirement system that makes the member ineligible to purchase service credit for the same period, the ASRS shall revoke that purchase of service credit, and return any payments made, less any interest payments made, if applicable.

C. The ASRS shall notify the member in writing of any adjustments.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2).

**ARTICLE 6. PUBLIC PARTICIPATION IN RULEMAKING**

**R2-8-601. Definitions**

The following definitions apply to this Article unless otherwise specified:

1. "Rulemaking record" means a file the ASRS maintains as specified in A.R.S. § 41-1029.
2. "Oral proceeding" means a public gathering the ASRS holds for the purpose of receiving comment and answering questions about a proposed rule as specified in A.R.S. § 41-1023.
3. "Presiding officer" means an individual selected by the ASRS Director to oversee oral proceedings.
4. "Substantive policy statement" means the same as in A.R.S. § 41-1001(22).

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Amended…

**R2-8-602. Reviewing Agency Rulemaking Record and Directory of Substantive Policy Statements**

Except on a state holiday, an individual may review a rulemaking record or the directory of substantive policy statements at the Phoenix office of the ASRS, Monday through Friday, from 8:00 a.m. until 5:00 p.m.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1).

**R2-8-603. Petition for Rulemaking**

A. An individual submitting a petition to the ASRS to make or amend a rule under A.R.S. § 41-1033 shall include the following in the petition:

1. The name and current address of the individual submitting the petition;
2. An identification of the rule to be made or amended;
3. The suggested language of the rule;
4. The reason why a new rule should be made or a current rule should be amended with supporting information, including:
   a. An identification of the persons who would be affected by the rule and how the persons would be affected; and
   b. If applicable, statistical data with references to attached exhibits;
5. The signature of the individual submitting the petition; and
6. The date the individual signs the petition.

B. The ASRS shall send a written notice of the ASRS's decision regarding the Petition for Rulemaking to the individual within 30 days of receipt of the petition.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1).

**R2-8-604. Review of a Rule, Agency Practice, or Substantive Policy Statement**

A. An individual submitting a petition to the ASRS under A.R.S. § 41-1033 requesting that the ASRS review an agency practice or substantive policy statement that the individual alleges constitutes a rule shall include the following in the petition:
   1. The name and current address of the individual submitting the petition,
   2. The reason the individual alleges that the agency practice or substantive policy statement constitutes a rule,
   3. The signature of the individual submitting the petition, and
   4. The date the individual signs the petition.
B. The individual who submits a petition under subsection (A) shall attach a copy of the substantive policy statement or a description of the agency practice to the petition.
C. The ASRS shall send a written notice of the ASRS's decision regarding the petition to the individual within 30 days of receipt of the petition.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1).

**R2-8-605. Objection to Rule Based Upon Economic, Small Business and Consumer Impact**

A. An individual submitting an objection to a rule based upon the economic, small business and consumer impact under A.R.S. § 41-1056.01 shall include the following in the objection:
   1. The name and current address of the individual submitting the objection;
   2. Identification of the rule;
   3. Either evidence that the actual economic, small business and consumer impact:
      a. Significantly exceeded the impact estimated in the economic, small business and consumer impact statement submitted during the making of the rule with supporting information attached as exhibits; or
      b. Was not estimated in the economic, small business and consumer impact statement submitted during the making of the rule and that actual impact imposes a significant burden on persons subject to the rule with supporting information attached as exhibits;
   4. The signature of the individual submitting the objection; and
   5. The date the individual signs the objection.
B. The ASRS shall respond to the objection as specified in A.R.S. § 41-1056.01(C).

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1).

**R2-8-606. Oral Proceedings**

A. An individual requesting an oral proceeding under A.R.S. § 41-1023(C) shall submit a written request to the ASRS that includes:
   1. The name and current address of the individual making the request;
   2. If applicable, the name of the public or private organization, partnership, corporation or association, or the name of the governmental entity the individual represents; and
   3. Reference to the proposed rule including, if known, the date and issue of the Arizona Administrative Register in which the Notice of Proposed Rulemaking was published.
B. The ASRS shall record an oral proceeding by either electronic or stenographic means and any CDs, cassette tapes, transcripts, lists, speaker slips, and written comments received shall become part of the official record.
C. A presiding officer shall perform the following acts on behalf of the ASRS when conducting an oral proceeding as prescribed under A.R.S. § 41-1023:
   1. Provide a method for individuals who attend the oral proceeding to voluntarily note their attendance;
   2. Provide a speaker slip that includes space for:
      a. An individual's name,
      b. The person the individual represents, if applicable,
      c. The rule the individual wishes to comment on or has a question about, and
      d. The approximate length of time the individual wishes to speak;
   3. Open the proceeding by identifying the rules to be considered, the location, date, time, purpose of the proceeding, and the agenda;
   4. Explain the background and general content of the proposed rulemaking;
   5. Provide for public comment as specified in A.R.S. § 41-1023(D); and
   6. Close the oral proceeding by announcing the location where written public comments are to be sent and specifying the close of record date and time.
D. A presiding officer may limit comments to a reasonable time period, as determined by the presiding officer. Oral comments may be limited to prevent undue repetition.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1).

**R2-8-607. Petition for Delayed Effective Date**

A. An individual who wishes to delay the effective date of a rule under A.R.S. § 41-1032 shall file a petition with the ASRS prior to the proposed rule's close of record date identified in the Notice of Proposed Rulemaking. The petition shall contain the:

1. Name and current address of the individual submitting the petition;
2. Identification of the proposed rule;
3. Need for the delay, specifying the undue hardship or other adverse impact that may result if the request for a delayed effective date is not granted;
4. Reason why the public interest will not be harmed by the delayed effective date;
5. Signature of the individual submitting the petition; and
6. Date the individual signs the petition.

B. The ASRS shall send a written notice of the ASRS's decision to the individual within 30 days of receipt of the Petition for Delayed Effective Date.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1).

## ARTICLE 7. CONTRIBUTIONS NOT WITHHELD

**R2-8-701. Definitions**

The following definitions apply to this Article unless otherwise specified:

1. "218 agreement" means a written agreement between the state, political subdivision, or political subdivision entity and the Social Security Administration, under the provisions of § 418 of the Social Security Act, to provide Social Security and Medicare or Medicare-only coverage to employees of the state, political subdivision, or political subdivision entity.
2. "Documentation" means a pay stub, completed W-2 form, completed Verification of Contributions Not Withheld form, employer letter or spreadsheet, completed State Personnel Action Form, Social Security Earnings Report, employment contract, payroll record, timesheet, or other ASRS employer-provided form that includes:
   a. Whether the employee was covered under the ASRS employer's 218 agreement prior to July 24, 2014,
   b. The number of hours worked or length of time the member was employed by the ASRS employer, or
   c. The compensation paid to the member by the ASRS employer.
3. "Eligible service" means employment with an ASRS employer:
   a. That is no more than 15 years before the date the ASRS receives written credible evidence that less than the correct amount of contributions were paid into the ASRS or the ASRS otherwise determines that less than the correct amount of contributions were made as specified in A.R.S. § 38-738(C); and
   b. In which the member worked a minimum of 20 hours per week for at least 20 weeks in a service year for at least one ASRS employer from 7/1/1999 to the present.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Amended…

**R2-8-702. General Information**

A. Verified eligible service that occurred more than 15 years before the date ASRS receives the information identified in R2-8-704(A)(1) is considered public service credit as provided in A.R.S. § 38-738(D), and is not applied under this Article.

B. The ASRS employer shall pay the ASRS employer's portion of the contributions the ASRS determines is owed under R2-8-706 whether or not:
   1. The member has withdrawn contributions as specified in R2-8-115; or
   2. The member pays the member's portion of the contributions.

C. The person who initiates the claim that contributions were not withheld for eligible service has the burden to prove a contribution error was made.

D. ASRS shall not waive payment of contributions or interest owed under this Article.

E. If a member is not able to establish eligibility for service credit for which contributions were not withheld, but is able to establish a period of employment by an ASRS employer the member may request to purchase service credit for that period under A.R.S. § 38-743 and Article 5 of this Chapter.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4).

**R2-8-703. ASRS Employer's Discovery of Error**

If an ASRS employer determines that contributions have not been withheld for a member for a period of eligible service, the ASRS employer shall notify ASRS in writing, and shall provide ASRS with the member's full name, Social Security number, months, years, and hours per week worked, the compensation each fiscal year for the time periods worked, and the member's position title and status at the time contributions should have been withheld.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4).

**R2-8-704. Member's Discovery of Error**

A. If a member believes that an ASRS employer has not withheld contributions for the member for a period of eligible service, the member shall:

1. Provide the ASRS employer with documentation of the member's claim and request that the ASRS employer provide a letter that includes the information in the Verification of Contributions Not Withheld form or complete a Verification of Contributions Not Withheld form that includes:
   a. The member's full name;
   b. Other names used by the member;
   c. The member's Social Security number;
   d. Whether the position was covered under the ASRS employer's 218 agreement;
   e. The position title the member held at the time the contributions should have been withheld;
   f. The eligibility of the member at the time the contributions should have been withheld;
   g. The following statements of understanding and agreements to be initialed by the authorized employer representative filling out the form:
      i. I understand it is my responsibility to verify the accuracy of the information I am providing on this form. I understand any individual who knowingly makes a false statement, or who falsifies or permits to be falsified any record of the ASRS with an intent to defraud the ASRS, is guilty of a Class 6 felony pursuant to A.R.S. § 38-793; and
      ii. I understand that, based on the information provided on this form, the ASRS may determine that contributions are owed on behalf of the member listed on this form, and the ASRS employer may incur a substantial financial obligation;
   h. The months worked, the hours per week worked, and the compensation earned by the member, by fiscal year;
   i. The name of the ASRS employer;
   j. The printed name and signature of the authorized employer representative;
   k. The daytime telephone number of the authorized employer representative;
   l. The title of the authorized employer representative; and
   m. The date the authorized employer representative signed the form;
2. Provide the ASRS with the completed Verification of Contributions Not Withheld form; and
3. If the ASRS employer refuses to fill out the Verification of Contributions Not Withheld form, or if the member disputes the information the ASRS employer completes on the form, provide the ASRS with the documentation the member believes supports the allegation that contributions should have been withheld, that includes proof:
   a. That the employee was covered under the ASRS employer's 218 agreement,
   b. Of the number of hours worked,
   c. Of the length of time the member was employed by the ASRS employer, and
   d. Of the compensation paid to the member by the ASRS employer.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4).

**R2-8-705. ASRS' Discovery of Error**

If the ASRS determines, as specified in A.R.S. § 38-738(B)(7), that contributions have not been withheld for a member for a period of eligible service, the ASRS shall notify the member and the ASRS employer in writing and shall request the following information:

1. The months, years and hours per week worked;
2. The compensation earned by the member each fiscal year for the time periods worked; and
3. The member's position title at the time contributions should have been withheld.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4).

**R2-8-706. Determination of Contributions Not Withheld**

A. Upon receipt of the information listed in R2-8-703, R2-8-704, or R2-8-705, the ASRS shall review the information to determine whether or not member contributions should have been withheld by the ASRS employer, the length of time those contributions should have been withheld, and the amount of contributions that should have been withheld.

B. Except for returning to work under A.R.S. § 38-766.01, the presence of a contract between a member and the ASRS employer does not alter the contribution requirements of A.R.S. §§ 38-736 and 38-737.

C. If there is any discrepancy between the documentation provided by the ASRS employer and the documentation provided by the member, a document used in the usual course of business prepared at the time in question is controlling.

D. The ASRS shall provide to the ASRS employer and the member a written statement that includes:
   1. The dates of eligible service for which contributions were not withheld,
   2. The dollar amount of contributions that should have been made,
   3. The dollar amount of the contributions to be paid by the ASRS employer,
   4. The interest on the ASRS employer contributions and member contributions to be paid by the ASRS employer,
   5. The dollar amount of contributions to be paid by the member, and
   6. To the member, the various payment options that may apply, as specified in R2-8-512 through R2-8-519.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4).

**R2-8-707. Submission of Payment**

A. Within 90 calendar days after the ASRS notifies the ASRS employer in writing of the amount due, the ASRS employer shall pay all ASRS employer contributions, including accrued interest on both the ASRS employer and member contributions, from the date the contributions were due to the date the ASRS notifies the ASRS employer of the amount due. An ASRS employer who makes payment under A.R.S. § 38-738(B)(3) is not liable for additional interest that may accrue as a result of a member's failure to remit payment required by A.R.S. § 38-738(B)(1). If the ASRS does not receive full payment of the ASRS employer's amount due within 90 calendar days after the ASRS notifies the ASRS employer of the amount due, interest on the amount not paid, as provided in A.R.S. § 38-738(B)(3), will accrue from the 91st day until the ASRS employer pays the full amount.

B. An ASRS employer may pay the amount the ASRS employer believes may be due at any time before ASRS's notification of the amount due in order to prevent the accrual of interest after the date of the payment. Any amount the ASRS employer pays that the ASRS determines is not owed shall be refunded to the ASRS employer.

C. A member may purchase eligible service for which contributions were not withheld in accordance with the requirements of Article 5 of this Chapter for purchase of service credit. If the ASRS does not receive full payment of the ASRS employee's amount due within 90 calendar days after the ASRS notifies the member that the ASRS received the ASRS employer's full payment, interest on the amount not paid, as provided in A.R.S. § 38-738(B)(1), will accrue from the 91st day until the member pays the full amount.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4).

**R2-8-708. Dispute of an ASRS Determination Regarding Contributions Not Withheld**

A. If a member or the ASRS employer disputes an ASRS determination regarding contributions not withheld, that party may request in writing that the Director review the ASRS determination. Within 30 calendar days of receiving the request for the review of the ASRS determination, the Director shall review and either approve or amend the ASRS determination, and send to the member and the ASRS employer written notice of the Director's decision.

B. If the member or the ASRS employer disputes the Director's decision, that party may obtain a hearing by filing a Request for a Hearing with the Board, in accordance with Article 4 of this Chapter, within 30 calendar days after receiving notice of the Director's determination. The party filing the request shall provide the name of the other party.

C. The burden of producing evidence is on the party challenging the determination.

D. If the ASRS Board determines that the service is eligible, the ASRS shall send both the ASRS employer and the member a written statement, as specified in R2-8-706(D), and the:

1. Decision of the Board;
2. Correct amount due as determined by the Board, if applicable;
3. Additional amount of interest due from the losing party, from the 91st day after the initial notification of the amount due to the date of the decision; and
4. Notification that interest shall continue to accrue on the total amount due at the rate specified in A.R.S. § 38-738(B) until the date payment is received by the ASRS.

E. If the ASRS Board determines that the service is not eligible, ASRS shall send both the ASRS employer and the member the decision of the Board.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4).

**R2-8-709. Nonpayment of Contributions**

A. A member receives service credit only for the portion of service the ASRS has determined is eligible and that the member has paid for.

B. A member does not receive service credit until both the ASRS employer and member portions of the contributions have been paid.

C. If the ASRS employer does not pay, the ASRS shall take any steps legally authorized to collect payment. Any steps the ASRS may take to collect payment are separate from any action a member may elect to take against the ASRS employer.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4).

38-711. Definitions

In this article, unless the context otherwise requires:

1. "Active member" means a member as defined in paragraph 23, subdivision (b) of this section who satisfies the eligibility criteria prescribed in section 38-727 and who is currently making member contributions as prescribed in section 38-736.

2. "Actuarial equivalent" means equality in value of the aggregate amounts expected to be received under two different forms of payment, based on mortality and interest rate assumptions approved from time to time by the board.

3. "ASRS" means the Arizona state retirement system established by this article.

4. "Assets" means the resources of ASRS including all cash, investments or securities.

5. "Average monthly compensation" means:

(a) For a member whose membership in ASRS commenced before January 1, 1984 and who left the member's contributions on deposit or reinstated forfeited credited service pursuant to section 38-742 for a period of employment that commenced before January 1, 1984, the higher of either:

(i) The monthly average of compensation that is calculated pursuant to subdivision (b) of this paragraph.

(ii) The monthly average of compensation on which contributions were remitted during a period of sixty consecutive months during which the member receives the highest compensation within the last one hundred twenty months of credited service. Any month for which no contributions are reported to ASRS or that falls within a period of nonpaid or partially paid leave of absence or sabbatical leave shall be excluded from the computation. The sixty consecutive months may entirely precede, may be both before and after or may be completely after any excluded months. If the member was employed for less than sixty consecutive months, the average monthly compensation is based on the total consecutive months worked. Payments for accumulated vacation or annual leave, sick leave, compensatory time or other forms of termination pay that, before August 12, 2005, constitute compensation for members whose membership in ASRS commenced before January 1, 1984, do not cease to be included as compensation if paid in the form of nonelective employer contributions under a 26 United States Code section 403(b) plan if all payments of employer and employee contributions are made at the time of termination. Contributions shall be made to ASRS on these amounts pursuant to sections 38-735, 38-736 and 38-737.

(b) For a member whose membership in ASRS commenced on or after January 1, 1984 but before July 1, 2011, the monthly average of compensation on which contributions were remitted during a period of thirty-six consecutive months during which a member receives the highest compensation within the last one hundred twenty months of credited service. Any month for which no contributions are reported to ASRS or that falls within a period of nonpaid or partially paid leave of absence or sabbatical leave shall be excluded from the computation. The thirty-six consecutive months may entirely precede, may be both before and after or may be completely after any excluded months. If the member was employed for less than thirty-six consecutive months, the average monthly compensation shall be based on the total consecutive months worked.

(c) For a member whose membership in ASRS commenced on or after July 1, 2011, the monthly average of compensation on which contributions were remitted during

a period of sixty consecutive months during which a member receives the highest compensation within the last one hundred twenty months of credited service. Any month for which no contributions are reported to ASRS or that falls within a period of nonpaid or partially paid leave of absence or sabbatical leave shall be excluded from the computation. The sixty consecutive months may entirely precede, may be both before and after or may be completely after any excluded months. If the member was employed for less than sixty consecutive months, the average monthly compensation shall be based on the total consecutive months worked.
6. "Board" means the ASRS board established in section 38-713.
7. "Compensation" means the gross amount paid to a member by an employer as salary or wages, including amounts that are subject to deferred compensation or tax shelter agreements, for services rendered to or for an employer, or that would have been paid to the member except for the member's election or a legal requirement that all or part of the gross amount be used for other purposes, but does not include amounts paid in excess of compensation limits established in section 38-746. Compensation includes amounts paid as salary or wages to a member by a second employer if the member meets the requirements prescribed in paragraph 23, subdivision (b) of this section with that second employer. Compensation, as provided in paragraph 5, subdivision (b) or (c) of this section, does not include:
(a) Lump sum payments, on termination of employment, for accumulated vacation or annual leave, sick leave, compensatory time or any other form of termination pay whether the payments are made in one payment or by installments over a period of time.
(b) Damages, costs, attorney fees, interest or other penalties paid pursuant to a court order or a compromise settlement or agreement to satisfy a grievance or claim even though the amount of the payment is based in whole or in part on previous salary or wage levels, except that, if the court order or compromise settlement or agreement directs salary or wages to be paid for a specific period of time, the payment is compensation for that specific period of time. If the amount directed to be paid is less than the actual salary or wages that would have been paid for the period if service had been performed, the contributions for the period shall be based on the amount of compensation that would have been paid if the service had been performed.
(c) Payment, at the member's option, in lieu of fringe benefits that are normally paid for or provided by the employer.
(d) Merit awards pursuant to section 38-613 and performance bonuses paid to assistant attorneys general pursuant to section 41-192.
(e) Amounts that are paid as salary or wages to a member for which employer contributions have not been paid.
8. "Contingent annuitant" means the person named by a member to receive retirement income payable following a member's death after retirement as provided in section 38-760.
9. "Credited service" means, subject to section 38-739, the number of years standing to the member's credit on the books of ASRS during which the member made the required contributions.
10. "Current annual compensation" means the greater of:

(a) Annualized compensation of the typical pay period amount immediately before the date of a request to ASRS to purchase credited service pursuant to section 38-743, 38-744 or 38-745. The typical pay period amount shall be determined by taking the five pay periods immediately before the date of a request, disregarding the highest and lowest compensation amount pay periods and averaging the three remaining pay periods.
(b) Annualized compensation of the partial year, disregarding the first compensation amount pay period, if the member has less than twelve months total compensation on the date of a request to purchase credited service pursuant to section 38-743, 38-744 or 38-745.
(c) The sum of the twelve months of compensation immediately before the date of a request to ASRS to purchase credited service pursuant to section 38-743, 38-744 or 38-745.
(d) The sum of the thirty-six months of compensation immediately before the date of a request to ASRS to purchase credited service pursuant to section 38-743, 38-744 or 38-745 divided by three.
(e) If the member has retired one or more times from ASRS, the average monthly compensation that was used for calculating the member's last pension benefit times twelve.
11. "Early retirement" means retirement before a member's normal retirement date after five years of total credited service and attainment of age fifty.
12. "Effective date" means July 1, 1970, except with respect to employers and members whose contributions to ASRS commence thereafter, the effective date of their membership in ASRS is as specified in the applicable joinder agreement.
13. "Employer" means:
(a) This state.
(b) Participating political subdivisions.
(c) Participating political subdivision entities.
14. "Employer contributions" means all amounts paid into ASRS by an employer on behalf of a member.
15. "Fiscal year" means the period from July 1 of any year to June 30 of the following year.
16. "Inactive member" means a member who previously made contributions to ASRS and who satisfies each of the following:
(a) Has not retired.
(b) Is not eligible for active membership in ASRS.
(c) Is not currently making contributions to ASRS.
(d) Has not withdrawn contributions from ASRS.
17. "Interest" means the assumed actuarial investment earnings rate approved by the board.
18. "Internal revenue code" means the United States internal revenue code of 1986, as amended.
19. "Investment manager" means the persons, companies, banks, insurance company investment funds, mutual fund companies, management or any combinations of those entities that are appointed by ASRS and that have responsibility and authority for investment of the monies of ASRS.
20. "Late retirement" means retirement after normal retirement.

21. "Leave of absence" means any unpaid leave authorized by the employer, including leaves authorized for sickness or disability or to pursue education or training.
22. "Life annuity" means equal monthly installments payable during the member's lifetime after retirement.
23. "Member":
(a) Means any employee of an employer on the effective date.
(b) Means all employees of an employer who are eligible for membership pursuant to section 38-727 and who are engaged to work at least twenty weeks in each fiscal year and at least twenty hours each week.
(c) Means any person receiving a benefit under ASRS.
(d) Means any person who is a former active member of ASRS and who has not withdrawn contributions from ASRS pursuant to section 38-740.
(e) Does not include any employee of an employer who is otherwise eligible pursuant to this article and who begins service in a limited appointment for not more than eighteen months on or after July 1, 1979. If the employment exceeds eighteen months, the employee shall be covered by ASRS as of the beginning of the nineteenth month of employment. In order to be excluded under this subdivision, classifications of employees designated by employers as limited appointments must be approved by the director.
(f) Does not include any leased employee. For the purposes of section 414(n) of the internal revenue code, "leased employee" means an individual who:
(i) Is not otherwise an employee of an employer.
(ii) Pursuant to a leasing agreement between the employer and another person, performs services for the employer on a substantially full-time basis for at least one year.
(iii) Performs services under the primary direction or control of the employer.
24. "Member contributions" means all amounts paid to ASRS by a member.
25. "Normal costs" means the sum of the individual normal costs for all active members for each fiscal year. The normal cost for an individual active member is the cost that is assigned to the fiscal year, through June 29, 2016, using the projected unit credit method and, beginning June 30, 2016, using the actuarial cost method determined by the board pursuant to section 38-714.
26. "Normal retirement age" means the age at which a member reaches the member's normal retirement date.
27. "Normal retirement date" means the earliest of the following:
(a) For a member whose membership commenced before July 1, 2011:
(i) A member's sixty-fifth birthday.
(ii) A member's sixty-second birthday and completion of at least ten years of credited service.
(iii) The first day that the sum of a member's age and years of total credited service equals eighty.
(b) For a member whose membership commenced on or after July 1, 2011:
(i) A member's sixty-fifth birthday.
(ii) A member's sixty-second birthday and completion of at least ten years of credited service.
(iii) A member's sixtieth birthday and completion of at least twenty-five years of credited service.

(iv) A member's fifty-fifth birthday and completion of at least thirty years of credited service.
28. "Political subdivision" means any political subdivision of this state and includes a political subdivision entity.
29. "Political subdivision entity" means an entity:
(a) That is located in this state.
(b) That is created in whole or in part by political subdivisions, including instrumentalities of political subdivisions.
(c) Where a majority of the membership of the entity is composed of political subdivisions.
(d) Whose primary purpose is the performance of a government related service.
30. "Retired member" means a member who is receiving retirement benefits pursuant to this article.
31. "Service year" means fiscal year, except that:
(a) If the normal work year required of a member is less than the full fiscal year but is for a period of at least nine months, the service year is the normal work year.
(b) For a salaried member employed on a contract basis under one contract, or two or more consecutive contracts, for a total period of at least nine months, the service year is the total period of the contract or consecutive contracts.
(c) In determining average monthly compensation pursuant to paragraph 5 of this section, the service year is considered to be twelve months of compensation.
32. "State" means this state, including any department, office, board, commission, agency, institution or other instrumentality of this state.
33. "Vested" means that a member is eligible to receive a future retirement benefit.

38-714. Powers and duties of ASRS and board
A. ASRS shall have the powers and privileges of a corporation, shall have an official seal and shall transact all business in the name "Arizona state retirement system", and in that name may sue and be sued.
B. The board is responsible for supervising the administration of this article by the director of ASRS.
C. The board is responsible for the performance of fiduciary duties and other responsibilities required to preserve and protect the retirement trust fund established by section 38-712.
D. The board shall not advocate for or against legislation providing for benefit modifications, except that the board shall provide technical and administrative information regarding the impact of benefit modification legislation.
E. The board may:
1. Determine the rights, benefits or obligations of any person under this article and afford any person dissatisfied with a determination a hearing on the determination.
2. Determine the amount, manner and time of payment of any benefits under this article.
3. Recommend amendments to this article and articles 2.1 and 7 of this chapter that are required for efficient and effective administration.
4. Adopt, amend or repeal rules for the administration of the plan, this article and articles 2.1 and 7 of this chapter.

F. Beginning June 30, 2016, the board shall determine which of the generally accepted actuarial cost methods shall be used in the annual actuarial valuation of the plan.
G. The board shall submit to the governor and legislature for each fiscal year no later than eight months after the close of the fiscal year a report of its operations and the operations of ASRS. The report shall follow generally accepted accounting principles and generally accepted financial reporting standards and shall include:
1. A report on an actuarial valuation of ASRS assets and liabilities.
2. Any other statistical and financial data that may be necessary for the proper understanding of the financial condition of ASRS and the results of board operations.
3. On request of the governor or the legislature, a list of investments owned. This list shall be provided in electronic format.
H. The board shall:
1. Prepare and publish a synopsis of the annual report for the information of ASRS members.
2. Contract for a study of the mortality, disability, service and other experiences of the members and employers participating in ASRS. The study shall be conducted for fiscal year 1990-1991 and for at least every fifth fiscal year thereafter. A report of the study shall be completed within eight months of the close of the applicable fiscal year and shall be submitted to the governor and the legislature.
3. Conduct an annual actuarial valuation of ASRS assets and liabilities.
I. The auditor general may make an annual audit of ASRS and transmit the results to the governor and the legislature.

38-720. ASRS depository
A. Exclusively for the purposes of this article, the board shall establish an ASRS depository that is separate and apart from all other public monies or funds of this state. The ASRS depository shall be a bank in which ASRS monies are deposited and collateralized as provided by law. The ASRS depository consists of subsidiary accounts for administration, retirement and investment. ASRS shall place all monies that come into its custody from any source in the ASRS depository.
B. Any monies not currently needed in the administration account or the retirement account may be invested to provide the maximum income.

38-735. Payment of contributions; recovery of delinquent payments
A. All amounts deducted from a member's compensation as provided in section 38-736 and employer contributions required pursuant to section 38-737 shall be paid to ASRS for deposit in the ASRS depository.
B. Each employer shall certify on each payroll the amount to be contributed and shall remit that amount to ASRS.
C. Payments made by employers pursuant to this article or article 2.1, 7 or 8 of this chapter become delinquent after the due date prescribed in the board's rules and thereafter shall be increased by interest from and after that date until payment is received by ASRS. ASRS shall charge interest on the delinquent payments at an annual rate equal to the interest rate assumption approved by the board from time to time for actuarial equivalency. Delinquent payments due under this article or article 2.1, 7 or 8 of this chapter, together with interest charges as provided in this

subsection, may be recovered by action in a court of competent jurisdiction against an employer that is liable for payments or, at the request of the director, may be deducted from any other monies, including excise revenue taxes, payable to the employer by any department or agency of this state. The employer shall record delinquent payments that are recovered or deducted from other monies pursuant to this subsection pursuant to applicable accounting and financial reporting standards.

38-736. Member contributions

A. Member contributions are required as a condition of employment and shall be made by payroll deductions. Member contributions shall begin simultaneously with membership in ASRS. Beginning July 1, 2011, member contributions are a percentage of a member's compensation equal to the employer contribution required pursuant to section 38-737. Amounts so deducted by employers shall be deposited in the ASRS depository.

B. The employer shall pay the member contributions required of members on account of compensation earned. The paid contributions shall be treated as employer contributions for the purpose of determining tax treatment under the internal revenue code. The effective date of the employer payment shall not be before the date ASRS has received notification from the United States internal revenue service that pursuant to section 414(h) of the internal revenue code the member contributions paid will not be included in gross income for income tax purposes until the paid contributions are distributed by refund or retirement benefit payments. The employer shall pay the member contributions from monies that are established and available in the retirement deduction account and that would otherwise have been designated as member contributions and paid to ASRS. Member contributions paid pursuant to this subsection shall be treated for all other purposes, in the same manner and to the same extent, as member contributions made before the approval of the United States internal revenue service pursuant to this section.

38-737. Employer contributions

A. Employer contributions shall be a percentage of compensation of all employees of the employers, excluding the compensation of those employees who are members of the defined contribution program administered by ASRS, as determined by the ASRS actuary pursuant to this section for June 30 of the fiscal year immediately preceding the preceding fiscal year, except that beginning with fiscal year 2001-2002 the contribution rate shall not be less than two percent of compensation of all employees of the employers. Beginning July 1, 2011 through June 29, 2016, the total employer contribution shall be determined on the projected unit credit method. Beginning June 30, 2016, the board shall determine the actuarial cost method pursuant to section 38-714. The total employer contributions shall be equal to the employer normal cost plus the amount required to amortize the past service funding requirement over a period that is determined by the board and consistent with generally accepted actuarial standards. In determining the past service funding period, the board shall seek to improve the funded status whenever the ASRS trust fund is less than one hundred percent funded.

B. All contributions made by the employer and allocated to the fund established by section 38-712 are irrevocable and shall be used as benefits under this article or to pay expenses of ASRS.
C. The required employer contributions shall be determined on an annual basis by an actuary who is selected by the board and who is a fellow of the society of actuaries. ASRS shall provide by December 15 of each fiscal year to the governor, the speaker of the house of representatives and the president of the senate the contribution rate for the ensuing fiscal year and the unfunded actuarial accrued liability, the funded status based on the actuarial value of assets and market value of assets and the annualized rate of return and the ten-year rate of return as of June 30 of the prior fiscal year.

38-740. Return of contributions
A. A member whose membership commenced before July 1, 2011 and who leaves employment other than by retirement or death may elect to receive a return of the contributions as follows:
1. If the member has less than five years of credited service, the member shall receive all of the member's contributions.
2. If a member has five or more years of credited service, the member shall receive the member's contributions and an amount equal to a percentage of the employer contributions paid on behalf of the member. This amount excludes payments made by an employer pursuant to section 38-738, subsection B, paragraph 3, unless the member has made the payment required by section 38-738, subsection B, paragraph 1. The percentage of employer contributions paid on behalf of the member shall be as follows:
(a) 5.0 to 5.9 years of credited service, twenty-five per cent.
(b) 6.0 to 6.9 years of credited service, forty per cent.
(c) 7.0 to 7.9 years of credited service, fifty-five per cent.
(d) 8.0 to 8.9 years of credited service, seventy per cent.
(e) 9.0 to 9.9 years of credited service, eighty-five per cent.
(f) 10.0 or more years of credited service, one hundred per cent.
3. Interest on the returned contributions as determined by the board.
B. A member whose membership commenced on or after July 1, 2011 and who leaves employment other than by retirement or death may elect to receive a return of all of the member's contributions with interest as determined by the board.
C. Notwithstanding subsection B of this section, if a member has five or more years of credited service and the member is terminated solely because of an employer reduction in force by reason of a lack of monies or elimination of the member's position, the member is entitled to receive the amounts prescribed in subsection A of this section.
D. Withdrawal of contributions with interest constitutes a withdrawal from membership in ASRS and results in a forfeiture of all other benefits under ASRS.
E. Notwithstanding any other provision of this article, a member who has not received a return of contributions pursuant to this section may combine any two or more periods of service for purposes of determining the member's benefits.
F. If a member receives more than the amount due to a member pursuant to this section, the member shall repay the amount of the overpayment together with interest at the interest rate earned on ASRS investments as reported on a quarterly

basis, but not less than the valuation rate established by the board, from the time of overpayment to the settlement of the debt.

38-762. Survivor benefits before retirement; definition

A. On the death of any active or inactive member before retirement, the designated beneficiary of the member shall be paid a survivor benefit equal to the sum of both of the following:

1. The member's contribution and interest and the employer's contribution and interest to the defined benefit plan established by this article for credited service that a member earned by working for an employer, plus all contributions and interest made for the purchase of military service, leave without pay or other public service credit. This amount excludes payments made by an employer pursuant to section 38-738, subsection B, paragraph 3, unless the member has made the payment required by section 38-738, subsection B, paragraph 1.

2. The amount of the member's employee account and the member's employer account together with supplemental credits, if any, transferred from the defined contribution program administered by ASRS to the defined benefit program established by this article.

B. Subsection A, paragraphs 1 and 2 of this section shall be accumulated at compound interest at a rate determined by the board through the day of the payment of the benefit.

C. In lieu of a single payment, a designated beneficiary who is eligible for a survivor benefit pursuant to subsection A of this section may elect to receive the actuarial equivalent of the survivor benefit as monthly income for life, if the resulting monthly amount is greater than or equal to the amount determined by the board under section 38-764, subsection F.

D. If a member dies before distribution of the member's benefits commences, the member's entire benefits shall be distributed within the required distribution provisions of section 401(a)(9) of the internal revenue code and the regulations that are issued under that section by the United States secretary of the treasury as prescribed in section 38-775.

E. If a deceased member did not designate a beneficiary or the beneficiary named by a member predeceases the member, ASRS shall pay the member's survivor benefit to the following persons in the following order of priority:

1. The member's surviving spouse.
2. The member's surviving natural or adopted children in equal shares.
3. The member's surviving parents in equal shares.
4. The member's estate.

F. Any payment pursuant to this section is payment for the account of the member or the member's beneficiary and all persons entitled to payment and, to the extent of the payment, is a full and complete discharge of all liability of the board or ASRS, or both, under or in connection with ASRS.

G. For the purposes of this section, "designated beneficiary" means any individual designated by the member as the member's beneficiary.

38-764. Commencement of retirement; payment of retirement benefits; lump sum payments

A. Retirement is deemed to commence on a date elected by the member. That date shall not be earlier than the day following the date of termination of employment, the date ASRS receives the member's completed retirement application or the date specified by the member pursuant to subsection I of this section.
B. Except as provided in subsection C of this section, all retirement benefits:
1. Are normally payable in monthly installments beginning on the commencement of retirement as prescribed in subsection A of this section.
2. Continue to and include the first day of the month in which death occurs or continue until the date of their cessation in accordance with any optional method of payment that may have been elected.
C. In the case of incapacity of a retired member or contingent annuitant, or in the case of any other emergency, as determined by the board, the board may make the payment to or on behalf of the retired member or contingent annuitant or to another person or persons the board determines to be lawfully entitled to receive payment. The payment is payment for the account of the retired member or contingent annuitant and all persons entitled to payment and, to the extent of the payment, is a full and complete discharge of all liability of the board or ASRS, or both, under or in connection with ASRS.
D. Except as provided in subsection E of this section, at the request of a retired member, a retired member's guardian or a court appointed conservator, the board may pay any increase in retirement benefits or the entire retirement benefit in a lump sum payment based on the actuarial present value of the benefit or the increase in the benefit if the payment of the benefits would result in ineligibility, reduction or elimination of social service programs provided to the member by this state, its political subdivisions or the federal government.
E. The board may pay the entire retirement benefit in a lump sum pursuant to subsection D of this section only if continued membership in ASRS will result in additional requests for lump sum payments based on cost of living adjustments or the establishment of minimum benefit awards.
F. If any benefit that is payable as a series of periodic payments amounts to less than a threshold amount determined by the board, the board, in its sole discretion and based on uniform rules it establishes, may order the amount to be paid in a lump sum. A member who receives a lump sum payment pursuant to this subsection remains a member of ASRS and is eligible for the coverage provided pursuant to section 38-782 and the payment pursuant to section 38-783, but is not eligible for a benefit increase pursuant to section 38-767.
G. All distributions of retirement benefits to a member shall be distributed within the required distribution provisions of section 401(a)(9) of the internal revenue code and the regulations that are issued under that section by the United States secretary of the treasury as prescribed in section 38-775.
H. A member may elect to cancel the effective date of retirement within thirty days of retirement or before the member's receipt of retirement benefits, whichever is later.
I. A member who attains a normal retirement date may retire at any time without terminating employment if the member is employed for less than the hours required for active membership pursuant to section 38-711, paragraph 23, subdivision (b).

38-769. Maximum retirement benefits; termination; definitions

A. Notwithstanding any other provision of this article, except as provided in subsection C of this section, the employer provided portion of a member's annual benefit payable in the form of a straight life annuity, at any time within a limitation year, shall not exceed one hundred sixty thousand dollars or a larger amount that is effective as of January 1 of each calendar year, is prescribed by the board and is due to any cost of living adjustment announced by the United States secretary of the treasury pursuant to section 415(d) of the internal revenue code. The board shall increase the amount pursuant to this subsection as of the effective date of the increase as prescribed by the United States secretary of the treasury. Benefit increases provided in this section resulting from the increase in the limitations of section 415(b) of the internal revenue code as amended by the economic growth and tax relief reconciliation act of 2001 shall be provided to all current and former members who have benefits that are limited by section 415(b) of the internal revenue code and who have an accrued benefit under ASRS immediately before July 1, 2001, other than an accrued benefit resulting from a benefit increase solely as a result of the increases provided by this section resulting from the increase in the limitations of section 415(b) of the internal revenue code as amended by the economic growth and tax relief reconciliation act of 2001.

B. Notwithstanding the limitations of subsection A of this section, the benefits payable to a member are deemed not to exceed the limitations determined under subsection A of this section if the retirement benefits payable to the member under this article do not exceed ten thousand dollars for the limitation year and if an employer has not at any time maintained a defined contribution plan in which the member has participated.

C. The limitations determined under subsection A of this section are subject to the following adjustments:

1. If a member has less than ten years of membership in ASRS, the maximum dollar limitation determined under subsection A of this section shall be multiplied by a fraction, the numerator of which is the number of years, or partial years, of membership in ASRS and the denominator of which is ten. The reduction provided in this paragraph also applies to the ten thousand dollar floor limitation provided in subsection B of this section, except that the reduction applies to years of service with an employer rather than to years of membership in ASRS. The reduction in this paragraph does not reduce the limitations determined under subsection A of this section to an amount less than one-tenth of the limitations as determined without regard to this paragraph.

2. If the member's benefit under ASRS commences before the member reaches sixty-two years of age, the benefit will be limited to:

(a) If the annuity starting date is in a limitation year beginning before July 1, 2007, the annual amount of a benefit payable in the form of a straight life annuity commencing at the member's annuity starting date that is the actuarial equivalent of the dollar limitation under section 415(b)(1)(A) of the internal revenue code as adjusted in subsection A of this section, with actuarial equivalence computed using whichever of the following produces the smaller annual amount:

(i) The interest rate and mortality table or other tabular factor specified by the board for determining actuarial equivalence for early retirement purposes.

(ii) A five per cent interest rate assumption and the applicable mortality table.

(b) If the annuity starting date is in a limitation year beginning on or after July 1, 2007 and ASRS does not have an immediately commencing straight life annuity payable at both age sixty-two and the age of benefit commencement, the annual amount of a benefit payable in the form of a straight life annuity commencing at the member's annuity starting date that is the actuarial equivalent of the dollar limitation under section 415(b)(1)(A) of the internal revenue code as adjusted in subsection A of this section, with actuarial equivalence computed using a five per cent interest rate assumption and the applicable mortality table and expressing the member's age based on completed calendar months as of the annuity start date.
(c) If the annuity starting date is in a limitation year beginning on or after July 1, 2007 and ASRS has an immediately commencing straight life annuity payable at both age sixty-two and the age of benefit commencement, the lesser of:
(i) The adjusted dollar limitation determined in accordance with subdivision (b) of this paragraph, determined without applying the limitations of section 415 of the internal revenue code.
(ii) The product of the dollar limitation under section 415(b)(1)(A) of the internal revenue code as adjusted in subsection A of this section, multiplied by the ratio of the annual amount of the immediately commencing straight life annuity under ASRS at the member's annuity starting date to the annual amount of the immediately commencing straight life annuity under ASRS at age sixty-two, determined without applying the limitations of section 415 of the internal revenue code.
3. If the retirement benefit under ASRS commences after the member reaches sixty-five years of age, the dollar limitation under section 415(b)(1)(A) of the internal revenue code as adjusted in subsection A of this section on that benefit is increased to:
(a) If the annuity starting date is in a limitation year beginning before July 1, 2007, the annual amount of a benefit payable in the form of a straight life annuity commencing at the member's annuity starting date that is the actuarial equivalent of the dollar limitation under section 415(b)(1)(A) as adjusted under section 415(d) of the internal revenue code, with actuarial equivalence computed using whichever of the following produces the smaller annual amount:
(i) The interest rate and mortality table or other tabular factor specified by the board for determining actuarial equivalence for delayed retirement purposes.
(ii) A five per cent interest rate assumption and the applicable mortality table.
(b) If the annuity starting date is in a limitation year beginning on or after July 1, 2007 and ASRS does not have an immediately commencing straight life annuity payable at both age sixty-five and the age of benefit commencement, the annual amount of a benefit payable in the form of a straight life annuity commencing at the member's annuity starting date that is the actuarial equivalent of the dollar limitation under section 415(b)(1)(A) of the internal revenue code as adjusted in subsection A of this section, with actuarial equivalence computed using a five per cent interest rate assumption and the applicable mortality table and expressing the member's age based on completed calendar months as of the annuity starting date.
(c) If the annuity starting date is in a limitation year beginning on or after July 1, 2007 and ASRS has an immediately commencing straight life annuity payable at both age sixty-five and the age of benefit commencement, the lesser of:

(i) The adjusted dollar limitation determined in accordance with subdivision (b) of this paragraph, determined without applying the limitations of section 415 of the internal revenue code.
(ii) The product of the dollar limitation under section 415(b)(1)(A) of the internal revenue code as adjusted in subsection A of this section, multiplied by the ratio of the annual amount of the immediately commencing straight life annuity under ASRS at the member's annuity starting date to the annual amount of the immediately commencing straight life annuity under ASRS at age sixty-five, determined without applying the limitations of section 415 of the internal revenue code.
4. For purposes of applying the limits of section 415 of the internal revenue code, a retirement benefit that is payable in any form other than a straight life annuity and that is not subject to section 417(e)(3) of the internal revenue code must be adjusted to an actuarially equivalent straight life annuity that equals either:
(a) For limitation years beginning on or after July 1, 2007, the greater of the annual amount of the straight life annuity, if any, payable under ASRS at the same annuity starting date, and the annual amount of a straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit computed using an interest rate of five per cent and the applicable mortality table under section 417(e)(3) of the internal revenue code.
(b) For limitation years beginning before July 1, 2007, the annual amount of a straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit computed using whichever of the following produces the greater annual amount:
(i) The interest rate and mortality table or other tabular factor specified by the board for adjusting benefits in the same form.
(ii) A five per cent interest rate assumption and the applicable mortality table.
5. For the purpose of applying the limits of section 415 of the internal revenue code, a retirement benefit that is payable in any form other than a straight life annuity to which section 417(e)(3) of the internal revenue code would apply if that section of the internal revenue code were applicable to ASRS must be adjusted to an actuarially equivalent straight life annuity that equals:
(a) If the annuity starting date is in a plan year beginning on or after July 1, 2006, the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, using whichever of the following produces the greater annual amount:
(i) The interest rate and mortality table or other tabular factor specified by the board for adjusting benefits in the same form.
(ii) A five and one-half per cent interest rate assumption and the applicable mortality table.
(iii) The applicable interest rate under section 417(e)(3) of the internal revenue code and the applicable mortality table, divided by 1.05. The stability period during which the applicable interest rate remains constant is the plan year. The look-back month that is used to determine the applicable interest rate during the stability period is the third full calendar month preceding the first day of the stability period. For the purposes of this item, "applicable interest rate" means the annual interest rate on thirty-year treasury securities as specified by the commissioner of the

United States internal revenue service for a month in revenue rulings or notices or another guidance published by the commissioner in the internal revenue bulletin.
(b) If the annuity starting date is in a plan year beginning in July 1, 2004 or July 1, 2005, the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit payable, using whichever of the following produces the greater annual amount:
(i) The interest rate and mortality table or other tabular factor specified by the board for adjusting benefits in the same form.
(ii) A five and one-half per cent interest assumption and the applicable mortality table.
(c) If the annuity starting date is on or after July 1, 2004 and before December 31, 2004, and ASRS applies the transition rule in section 101(d)(3) of the pension funding equity act of 2005 in lieu of the rule in subdivision (b) of this paragraph, the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, determined in accordance with internal revenue service notice 2004-78.
6. When calculating the limitations of paragraph 4 or 5 of this subsection, the portion of any joint or survivor annuity that constitutes a qualified joint and survivor annuity as defined in section 417 of the internal revenue code shall be disregarded.
D. Subsection C, paragraphs 1 and 2 of this section do not apply to income received from ASRS as a pension, annuity or similar allowance as a result of the recipient developing a disability by personal injury or sickness or to amounts received from ASRS by beneficiaries, survivors or the estate of a member as a result of the death of the member.
E. Notwithstanding any other provision of this section, the annual benefit payable under this article may be reduced to the extent necessary, as determined by the board, to prevent disqualification of ASRS under section 415 of the internal revenue code that imposes additional limitations on the annual benefits payable to members who also may be participating in another tax qualified pension or savings plan of this state. An employer shall not provide employee retirement or deferred benefits if the benefits authorized by this section and as required by federal law result in the failure of ASRS to meet federal qualification standards as applied to public pension plans. The board shall advise affected members of any additional information concerning their annual benefits required by this subsection. All benefits payable pursuant to this subsection shall comply with the limitations of benefits contained in section 415 of the internal revenue code and the final treasury regulations issued under that section. Notwithstanding any provision of this article to the contrary, if the annual benefits within the meaning of section 415 of the internal revenue code for any member exceed the limits of section 415(b) of the internal revenue code and this section, ASRS may only correct the excess pursuant to the employee plans compliance resolution system prescribed in internal revenue service revenue procedure 2008-50 or any future guidance by the internal revenue service, including the preamble of the final treasury regulations issued under section 415 of the internal revenue code.
F. If the maximum amount of benefit allowed under section 415 of the internal revenue code is increased after the commencement date of a member's benefit due

to any cost of living adjustment announced by the United States secretary of the treasury pursuant to the provisions of section 415(d) of the internal revenue code, the amount of the monthly benefit payable under ASRS to a member whose benefit is restricted due to the provisions of section 415(d) of the internal revenue code shall be increased by the board as of the date prescribed by the United States secretary of the treasury on which the increase shall become effective. The increase shall reflect the increase in the amount of retirement income that may be payable under this article as a result of the cost of living adjustment.

G. In determining the adjustments to the defined benefit dollar limitation authorized by subsection A of this section, the board shall prescribe a larger defined benefit dollar limitation if prescribed by the United States secretary of the treasury pursuant to section 415(d) of the internal revenue code. An adjustment to the defined benefit dollar limitation prescribed in subsection A of this section is not effective before the first calendar year for which the United States secretary of the treasury publishes the adjustment. After it is prescribed by the board, the new defined benefit dollar limitation applies to the limitation year ending with or within the calendar year for which the secretary of the treasury makes the adjustment.

H. For the purposes of the limitations prescribed by this section, all member and employer contributions made to ASRS to provide a member benefits pursuant to section 38-771 or 38-771.01 and all member contributions that are not treated as picked up by the employer under section 414(h)(2) of the internal revenue code shall be treated as made to a separate defined contribution plan.

I. On termination or partial termination of ASRS, the accrued benefit of each member is, as of the date of termination or partial termination, fully vested and nonforfeitable to the extent then funded.

J. If ASRS terminates, the benefit of any highly compensated employee as defined in section 414(q) of the internal revenue code and any highly compensated former employee is limited to a benefit that is nondiscriminatory under section 401(a)(4) of the internal revenue code and as follows:

1. Benefits distributed to any of the twenty-five active and former highly compensated employees with the greatest compensation in the current or any prior fiscal year are restricted so that the annual payments are no greater than an amount equal to the payment that would be made on behalf of the member under a straight life annuity that is the actuarial equivalent of the sum of the member's accrued benefit, the member's other benefits under ASRS, excluding a social security supplement as defined in 26 Code of Federal Regulations section 1.411(a)-7(C)(4)(ii), and the amount the member is entitled to receive under a social security supplement.

2. Paragraph 1 of this subsection does not apply if either:

(a) After payment of the benefit to a member described in paragraph 1 of this subsection, the value of ASRS assets equals or exceeds one hundred ten per cent of the value of the current liabilities, as defined in section 412(l)(7) of the internal revenue code, of ASRS.

(b) The value of the benefits for a member described in paragraph 1 of this subsection is less than one per cent of the value of the current liabilities, as defined in section 412(l)(7) of the internal revenue code, of ASRS before distribution.

(c) The value of the benefits payable by ASRS to a member described in paragraph 1 of this subsection does not exceed three thousand five hundred dollars.

K. For the purposes of subsection J of this section, "benefit" includes loans in excess of the amount prescribed in section 72(p)(2)(A) of the internal revenue code, any periodic income, any withdrawal values payable to a living member and any death benefits not provided for by insurance on the member's life.
L. On retirement of a member who was a retired member, who resumed active membership and who subsequently retires, the limitations of this section in effect on the member's subsequent retirement apply to the member's retirement benefit payable as recomputed pursuant to section 38-766. In addition, the sum of the present value of the member's recomputed retirement benefits plus the present value of the benefits the member received during the member's prior retirement shall not exceed the present value of the limitations in effect on the member's subsequent retirement. The limitations prescribed in this subsection shall not reduce a member's retirement benefit below the retirement benefit the member was receiving before the member resumed active membership. For the purposes of determining present value under this subsection, the board shall use the actuarial equivalent assumptions provided in section 38-711, paragraph 2.
M. For the purposes of this section:
1. The following adjustments shall be made to the definition of compensation prescribed in subsection O of this section:
(a) Compensation shall be adjusted for the types of compensation that are prescribed in this paragraph and that are paid after a member's severance from employment with an employer. Amounts described in subdivisions (b), (c) and (d) of this paragraph may be included only as compensation to the extent the amounts are paid by the later of two and one-half months after severance from employment or by the end of the limitation year that includes the date of the severance from employment. Any other payment of compensation paid after severance of employment that is not described in the types of compensation prescribed in this paragraph is not considered compensation for purposes of this section, even if payment is made within the time period prescribed in this subdivision.
(b) Compensation shall include regular pay after severance of employment if the payment is regular compensation for services performed during the member's regular working hours or compensation for services performed outside the member's regular working hours, such as overtime or shift differential, commission, bonus or other similar payments, and the payment would have been paid to the member before a severance from employment if the member had continued in employment with the employer.
(c) Leave cash-outs shall be included in compensation if those amounts would have been included in compensation if they were paid before the member's severance from employment and the amounts are payment for unused accrued bona fide sick, vacation or other leave, but only if the member would have been able to use the leave if employment had continued.
(d) Deferred compensation shall be included in compensation if the compensation would have been included in compensation if it had been paid before the member's severance from employment and the compensation is received pursuant to a nonqualified unfunded deferred compensation plan, but only if the payment would have been paid at the same time if the member had continued in employment with the employer and only to the extent that the payment is includable in the member's gross income.

(e) Compensation does include payments to an individual who does not currently perform services for an employer by reason of qualified military service as defined in section 414(u)(5) of the internal revenue code to the extent those payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the employer rather than entering qualified military service.
(f) Compensation does not include compensation paid to a member who is a person with a permanent and total disability as defined in section 22(e)(3) of the internal revenue code.
(g) Compensation shall include amounts that are includable in the gross income of a member as required by section 409A or section 457(f)(1)(A) of the internal revenue code or because the amounts are constructively received by the member.
2. Compensation for a limitation year shall not include amounts earned but not paid during the limitation year solely because of the timing of pay periods and pay dates.
3. Payments awarded by an administrative agency or court or pursuant to a bona fide agreement by an employer to compensate a member for lost wages are compensation for the limitation year to which the back pay relates, but only to the extent the payments represent wages and compensation that would otherwise be included in compensation under this section.
N. The definition of limitation year prescribed in subsection O of this section may only be changed by an amendment to subsection O, except that if ASRS is terminated effective as of a date other than the last day of the limitation year, the termination shall be treated as if this section has been amended to change the definition of limitation year.
O. For the purposes of this section:
1. Annual additions shall be determined as provided in section 38-747, subsection O.
2. "Annual benefit" means a benefit, including any portion of a member's retirement benefit payable to an alternate payee under a qualified domestic relations order that satisfies the requirements prescribed in section 414(p)(1)(A)(i) of the internal revenue code and section 38-773, payable annually in the form of a straight life annuity, disregarding the portion of a joint and survivor annuity that constitutes a qualified joint and survivor annuity as defined in section 417 of the internal revenue code, with no ancillary or incidental benefits or rollover contributions and excluding any portion of the benefit derived from member contributions or other contributions that are treated as a separate defined contribution plan under section 415 of the internal revenue code but including any of those contributions that are picked up by the employer under section 414(h) of the internal revenue code, or that otherwise are not treated as a separate defined contribution plan. If the benefit is payable in another form, the determination as to whether the limitation described in subsection A of this section has been satisfied shall be made by the board by adjusting the benefit so that it is actuarially equivalent to the annual benefit described in this paragraph in accordance with the regulations promulgated by the United States secretary of the treasury. In addition, for determining the annual benefit attributable to member contributions, the factors described in section 411(c)(2)(B) of the internal revenue code and the regulations promulgated under the internal revenue code shall be used by the board regardless of whether section

411 of the internal revenue code applies to ASRS. The factors described in section 411(c)(2)(B) of the internal revenue code shall be those factors described under section 417(e)(3) of the internal revenue code and determined on the basis of the 417(e) mortality table and an interest rate as prescribed in subsection C, paragraph 5 of this section.
3. "Applicable mortality table" means the mortality table described in internal revenue service revenue ruling 2001-62.
4. "Compensation" means the member's earned income, wages, salaries, fees for professional service and other amounts received for personal services actually rendered in the course of employment with the employer and includes amounts described in sections 104(a)(3) and 105(a) of the internal revenue code, but only to the extent that these amounts are includable in the gross income of the member. Compensation also includes any elective deferral as defined in section 402(g)(3) of the internal revenue code and any amount that is contributed or deferred by an employer at the election of a member and that is not includable in the gross income of the member by reason of section 125, 132(f)(4) or 457 of the internal revenue code. Compensation does not mean:
(a) Employer contributions to a plan of deferred compensation to the extent the contributions are not included in the gross income of the employee for the taxable year in which contributed and any distributions from a plan of deferred compensation, regardless of whether the amounts are includable in gross income of the employee when distributed, except that any amount received by a member pursuant to an unfunded nonqualified plan may be considered as compensation for the purposes of this section in the year the amounts are includable in the gross income of the member under the internal revenue code.
(b) Other amounts that receive special tax benefits, such as premiums for group term life insurance, but only to the extent that the premiums are not includable in the gross income of the employee, qualified transportation fringe benefits as defined in section 132 of the internal revenue code and, effective for plan years beginning from and after December 31, 1987, any amounts under section 125 of the internal revenue code that are not available to a member in cash in lieu of group health coverage because the member is unable to certify that the member has other health coverage.
5. "Defined benefit dollar limitation" means the dollar limitation determined under subsection A of this section.
6. "Defined benefit plan" has the same meaning prescribed in section 414(j) of the internal revenue code.
7. "Defined contribution plan" has the same meaning prescribed in section 414(i) of the internal revenue code.
8. "Limitation year" and "years of service" mean the fiscal year.

38-771. Benefit options for transferred defined contribution program members; definitions
A. On or before December 31, 1995 a nonretired ASRS member who was a member of the defined contribution program administered by ASRS and who was transferred to the defined benefit program established by this article on July 1, 1981 shall elect to receive either retirement benefits provided under this section or retirement benefits as otherwise provided by this article. An election under this subsection is

irrevocable. A member who fails to make an election under this subsection is deemed to have elected to receive retirement benefits provided under this section.
B. A member who elects to receive retirement benefits provided under this section is eligible only for those benefits.
C. If a member elects to receive retirement benefits provided under this section, the member shall elect to receive retirement benefits based on either of the following:
1. The contributions paid by the member and member's employer, plus all earnings attributed to the member's retirement account, through the member's retirement date.
2. Except as provided in subsections E and F of this section, contributions paid by the member and member's employer at the contribution rate in effect before July 1, 1975 and an employee and employer contribution rate of seven per cent calculated from July 1, 1975, plus all earnings attributed to the member's retirement account, through the member's retirement date.
D. Notwithstanding sections 38-736 and 38-737, members who elect to receive retirement benefits provided under this section and their employers shall each make contributions at a rate of seven per cent of the member's compensation and, beginning on July 1, 1998, employers shall make contributions to ASRS on behalf of their respective members who have elected to receive retirement benefits provided under this section to pay the actuarially determined amount necessary to provide the group health and accident insurance benefits for those retired members and their dependents as provided under section 38-783. Member contributions pursuant to this subsection shall be salary reduction contributions pursuant to section 38-747, subsections C and D.
E. Subject to subsection F of this section, if a member desires to receive retirement benefits based on subsection C, paragraph 2 of this section, the member shall make the election on or before June 30, 1999 and during the member's active employment. The election shall be made in accordance with section 38-747, subsections C, D and H. If a member elects to receive retirement benefits based on subsection C, paragraph 2 of this section, both the member and the member's employer shall pay to ASRS the difference between the contributions made and seven per cent of the member's gross compensation from July 1, 1984 through December 31, 1995. If a member elects to have the member's employer make payments for all or a portion of the contributions pursuant to section 38-747, subsection D, the member's employer shall make the contributions as required by section 38-747, subsection D. If a member elects to make contributions pursuant to section 38-747, subsection H, both the member and the member's employer shall pay to ASRS the portion of the difference between the total required contributions and that portion of the required contributions that the member has elected to have the member's employer pay pursuant to section 38-747, subsection D. The member's employer shall make the employer's contributions attributable to a member's period of employment before July 1, 1999 in a single lump sum payment at the time and computed in the manner prescribed in section 38-771.01, subsections G and H. If a member elects pursuant to subsection C, paragraph 2 of this section to have contributions made or to make contributions pursuant to section 38-747, subsection D or H for less than the full amount permitted by this subsection the member's benefits shall be computed only with reference to the

contributions actually made. A member shall make an election pursuant to this section with respect to contributions to be made by the member before July 1, 1999. This election shall remain in full force and effect on and after July 1, 1999 and may be modified or revoked by the member only if the modification or revocation is specifically authorized in section 38-747. Section 38-771.01 governs any elections made by a member with respect to contributions to be made by the member to ASRS on or after July 1, 1999.

F. Contributions made to ASRS by a member and the member's employer pursuant to subsections D and E of this section shall not exceed, in any one limitation year, the limits of section 38-747, subsection E. If for any reason, the member and employer contributions to ASRS made pursuant to subsections D and E of this section would, at the time such contributions are due, taking into account other employer and member contributions due to ASRS for the limitation year, exceed the limits of section 38-747, the amount to be paid by the member and the member's employer under subsection E of this section shall be proportionately reduced and such reduction shall be carried into the succeeding limitation year and paid by the member and the member's employer within thirty days of the beginning of such limitation year, unless the limits of section 38-747 would again be exceeded, in which event this procedure will be repeated until all such contributions have been made. If more than one employer is contributing on behalf of a member, the reduction and contributions in succeeding years shall be proportionately allocated among the employers. If a member retires prior to making all contributions under subsections D and E of this section because of the limitations of section 38-747, the member's benefits under this section shall be calculated only with reference to the contributions actually made. For purposes of this subsection, "limitation year" has the same meaning prescribed in section 38-769.

G. A member who elects to receive retirement benefits provided under this section is subject to the provisions of section 38-771.01, subsection K that are equivalent to those imposed before the member's transfer from the defined contribution program administered by ASRS to the defined benefit program established by this article.

H. ASRS shall handle all retirement accounts of members who elect retirement benefits provided under this section and all member and employer contributions attributable to those members in the same manner as retirement accounts and contributions that are part of the defined contribution program administered by ASRS. Retirement accounts of members who elect to receive retirement benefits provided under this section are eligible for interest and supplemental credits on the same basis as members who retired under the defined contribution program administered by ASRS.

I. The election of retirement benefits by a member pursuant to this section is a waiver of all claims and demands by the member that the retirement benefits are less than the amount of retirement benefits payable to the member under the defined contribution program administered by ASRS if the member had remained a member of the defined contribution program administered by ASRS.

J. For purposes of this section:

1. "Member's employer" means an employer who compensated the member during a period when the member's contributions were less than seven per cent.

2. "Retirement account" means the combined member and employer contributions with interest or earnings on the contributions including any allocations credited as employer contributions.

38-771.01. Alternative benefits for transferred defined contribution program members; definitions

A. A retired or nonretired ASRS member who was a member of the defined contribution program administered by ASRS, who was transferred to the defined benefit program established by this article on July 1, 1981, who is determined by ASRS to qualify under paragraph 1 of this subsection and who is not excluded under paragraph 2 of this subsection shall receive defined contribution benefits pursuant to this section, or, if greater, defined benefit retirement benefits pursuant to this article. A retired or nonretired ASRS member qualifies or is excluded under this section based on the following criteria:

1. A member is entitled to receive benefits under this section only if the member satisfies at least one of the following requirements:

(a) Is not retired as of July 1, 1999 even though the member may have previously elected to receive benefits under the defined benefit program established by this article, may have transferred employment between or among employers on or after July 1, 1981 or may have terminated employment on or after July 1, 1981 and after that termination date returned to employment with an employer.

(b) Retired on or after July 1, 1984 and elected to receive benefits under the defined benefit program established by this article.

(c) Retired on or after July 1, 1984 and is receiving benefits under the defined contribution program administered by ASRS.

2. Even if the member otherwise qualifies under paragraph 1 of this subsection, a member is not entitled to receive benefits under this section if any of the following applies to the member:

(a) The member retired before July 1, 1984.

(b) The member is entitled to receive benefits pursuant to section 38-771 and has paid to ASRS pursuant to section 38-771 before July 1, 1999 the entire amount that is attributable to service performed on or after July 1, 1984 and that is equal to the contribution rate of seven per cent of compensation, the contribution has been matched by an equal contribution to ASRS by the member's employers and all applicable earnings and supplemental credits have been credited for the member's account.

(c) The member withdrew the member's contributions from the defined contribution program administered by ASRS and, as of July 1, 1999, is not entitled to any benefit under the defined contribution program administered by ASRS.

(d) The member transferred the member's benefits under either the defined benefit program established by this article or the defined contribution program administered by ASRS to any other retirement system.

B. A beneficiary is entitled to receive benefits pursuant to this section only if the beneficiary satisfies the requirements of paragraph 1 of this subsection and is not excluded under paragraph 2 of this subsection based on the following criteria:

1. The beneficiary is a beneficiary of a retired or nonretired member who qualifies for benefits under subsection A, paragraph 1 of this section, is not excluded under subsection A, paragraph 2 of this section and as of July 1, 1999 either:

(a) Is receiving a monthly benefit from the defined benefit program established by this article or the defined contribution program administered by ASRS.
(b) Is living, is a survivor of a deceased retired or nonretired member and elected to receive a lump sum distribution of the survivor benefit that was payable on the death of the member.
2. Even if the beneficiary satisfies the requirements of paragraph 1 of this subsection, a beneficiary is not entitled to receive benefits under this section if the beneficiary is a beneficiary of a deceased retired member who elected a form of benefit under either the defined benefit program established by this article or the defined contribution program administered by ASRS that did not provide for survivor benefits after the death of the retired member.
C. A member or a deceased member's beneficiary who receives benefits pursuant to this section shall receive benefits based on the sum of the following:
1. Contributions paid by the member and the member's employer at the contribution rates in effect before July 1, 1984, together with all applicable earnings and supplemental credits on those contributions.
2. Contributions paid by the member's employer at the contribution rates in effect beginning on July 1, 1984 through the earlier of June 30, 1999 or the member's retirement or death, together with all applicable earnings and supplemental credits on those contributions computed through the earlier of June 30, 1999 or the member's retirement or death.
3. The excess of employer contributions computed at the rate of seven per cent of compensation beginning on July 1, 1984 through June 30, 1999 over the actual contributions paid by the member's employer as described in paragraph 2 of this subsection, together with all earnings and supplemental credits that would have been earned on those excess contributions computed from the date the contributions would have been paid to ASRS.
4. Contributions paid by the member at the contribution rate in effect on and after July 1, 1984, together with all earnings on those contributions.
5. With respect to member contributions that were not paid to ASRS before July 1, 1999 pursuant to section 38-771, subsection C, paragraph 2, forty per cent of the earnings that would have been credited on those contributions through the earlier of June 30, 1999 or the member's retirement or death as if those member contributions had been paid.
6. Contributions paid by the member to ASRS before July 1, 1999 pursuant to an election under section 38-771, subsection C, paragraph 2 and subsection E, together with all earnings on those contributions.
7. Contributions paid by the member to ASRS on or after July 1, 1999 pursuant to an election under section 38-771, subsection C, paragraph 2 and subsection E, together with earnings on those contributions.
8. Contributions paid by the member to ASRS on or after July 1, 1999 pursuant to this section, together with earnings on those contributions.
9. Contributions paid by the member's employer to ASRS on or after July 1, 1999 pursuant to this section, together with all applicable earnings and supplemental credits on those contributions.
D. Effective on July 1, 1999, ASRS shall adjust the retirement account reserves under the defined contribution program administered by ASRS for retired members and the beneficiaries of deceased retired members entitled to benefits pursuant to

this section to give effect to additional contributions, earnings and supplemental credits for those retired members prescribed in subsection C, paragraphs 1 through 6 of this section for the periods of the members' employment before July 1, 1999 and to give effect to the recomputation, adjustment and payment of benefits pursuant to subsection G of this section. After this recomputation, adjustment and payment, ASRS shall credit and charge these retirement account reserves with the amounts prescribed under the defined contribution program administered by ASRS based on the adjustments prescribed in this section.

E. Effective on July 1, 1999, ASRS shall adjust each nonretired member's accounts under the defined contribution program administered by ASRS to equal the sum of the contribution amounts prescribed in subsection C, paragraphs 1 through 6 of this section with respect to periods of a member's employment before July 1, 1999. After the adjustment, these accounts shall accrue applicable interest and supplemental credits based on the entire amounts credited to the accounts.

F. For periods of a nonretired member's employment on or after July 1, 1999, a nonretired member who is entitled to receive benefits pursuant to this section and the nonretired member's employer shall each make contributions to ASRS at the rates established pursuant to sections 38-736 and 38-737, except as follows:

1. If a nonretired member made an election pursuant to section 38-771, subsection C, paragraph 2 and section 38-747, subsections C and D before July 1, 1999, the member's employer shall continue to make pickup contributions to ASRS on behalf of the member pursuant to the member's election, except that with respect to employer contributions that are required pursuant to section 38-771, subsection E for periods of a member's employment before July 1, 1999, the employer shall make a lump sum payment to ASRS as computed pursuant to subsection G of this section and required to be paid to ASRS pursuant to subsection H of this section.

2. If a nonretired member elected or was deemed to have elected benefits pursuant to section 38-771 before December 31, 1995, for periods of a member's employment from and after the election or deemed election the nonretired member's employer and the member shall each continue to pay to ASRS an amount equal to seven per cent of the member's compensation in lieu of the rates established pursuant to sections 38-736 and 38-737.

3. A nonretired member who is entitled to receive benefits pursuant to this section and who never elected to receive benefits pursuant to section 38-771 may elect pursuant to section 38-747, subsections C and D to make contributions at the rate of seven per cent of the member's compensation for periods of a member's employment on or after July 1, 1999. If a member makes an election pursuant to this paragraph, the election is irrevocable as provided in section 38-747, subsection D and the member and the member's employer shall each make contributions at a rate of seven per cent of the member's compensation beginning on the effective date of the election.

4. A nonretired member who is entitled to receive benefits pursuant to this section may elect pursuant to section 38-747, subsections C, D and H to make contributions with respect to member contributions that were not made to ASRS but that could have been made pursuant to section 38-771, subsection C, paragraph 2 for periods of employment before July 1, 1999 other than member contributions for which an irrevocable election pursuant to section 38-747, subsections C and D was in effect before July 1, 1999.

5. In addition to any other employer contributions required pursuant to this section, a nonretired member's employer shall make contributions to ASRS on behalf of the nonretired member who will receive retirement benefits pursuant to this section to pay the actuarially determined amount necessary to provide the group health and accident insurance benefits for the nonretired member and the nonretired member's dependents as provided under section 38-783.
6. Notwithstanding any other provision of this article, an election permitted pursuant to this section shall not revoke, amend or alter any irrevocable election made by a member before July 1, 1999 pursuant to sections 38-747 and 38-771.
G. Effective on July 1, 1999, ASRS shall recompute the monthly and annual benefits for retired members entitled to receive benefits pursuant to this section and the monthly or lump sum survivor's benefits payable to beneficiaries entitled to receive benefits pursuant to this section. The recomputation of benefits shall be as if the member's retirement account or retirement reserve account on the date of retirement or death had been computed based on the amounts that would have been credited to the account as of that date based on the contribution amounts prescribed in subsection C, paragraphs 1 through 6 of this section. In addition and after recomputing benefits described in this subsection, with respect to members who retired on or after July 1, 1984, ASRS shall recompute the annual payments that would have been made to the member or beneficiary of a deceased member entitled to receive benefits under this section in excess of the annual payments actually made. The recomputation shall be calculated and paid as follows:
1. The recomputation shall be calculated and paid based on the member's and, if applicable, the member's beneficiary's age, the benefit option selected at the date of the initial benefit payments and the actuarial assumptions used by ASRS at the time the initial benefit payments were computed.
2. Before July 1, 2000, ASRS shall pay to the retired member or beneficiary in a lump sum the difference between the recomputed amount and the actual distributions paid to the member or beneficiary through July 1, 1999, together with interest at the rate of eight per cent a year, compounded monthly, computed from the date each excess payment should have been paid through the date of payment to the retired member or beneficiary.
3. If the retired member is living, ASRS shall pay the lump sum payment to the member. If the member is deceased and is survived by a beneficiary who is then living and receiving a monthly benefit on account of the deceased member, ASRS shall pay the lump sum payment to the beneficiary. The payment to the beneficiary shall include the recomputed amount that is payable pursuant to this section and that would have been paid to the member through the date of the member's death plus the recomputed amount that is payable pursuant to this section and that would have been payable to the beneficiary from the member's date of death. Section 38-770 applies to a payment to a member or the member's beneficiary who is the surviving spouse of the member, if the payment is substantially larger or smaller than the monthly benefit payable by ASRS to the member.
4. With respect to a beneficiary who is a survivor of a deceased nonretired member who would have been entitled to benefits under this section and who elected a lump sum distribution of the survivor benefit that was payable on the death of the nonretired member, ASRS shall pay the recomputed amount in a lump sum to the

beneficiary. If the beneficiary is the surviving spouse of the member, section 38-770 applies to the payment.

5. Effective on July 1, 1999, ASRS shall increase the member's or beneficiary's monthly and annual benefit to the recomputed amount. After that adjustment, ASRS shall adjust the member's or beneficiary's annual benefit as otherwise provided under the defined contribution program administered by ASRS.

H. Before July 1, 2002, the employer of each nonretired or retired member or deceased member who has a beneficiary entitled to adjustments and payments pursuant to subsections E and G of this section for periods of a member's employment before July 1, 1999 shall pay to ASRS in one or more installments those amounts required by ASRS to make the recomputations and adjustments pursuant to this section. ASRS shall determine the amount to be paid by the employer to ASRS as of July 1, 1999, plus interest at the rate of eight per cent a year, compounded monthly, from July 1, 1999 through the date the payment is made by the employer to ASRS. Any payments by the employer shall first be applied to accrued and unpaid interest and then to the amount to be paid by the employer to ASRS. ASRS shall allocate the payment to the assets maintained under the defined contribution program administered by ASRS. When determining the amounts required to be paid by employers for the recomputations and adjustments pursuant to this section, ASRS first shall transfer on July 1, 1999 from the assets maintained by ASRS under the defined benefit program established by this article to the assets maintained by ASRS under the defined contribution program administered by ASRS an amount equal to the sum of the defined benefit program equity balances of the retired and nonretired members or their beneficiaries whose benefits are transferred from the defined benefit program to the defined contribution program pursuant to this section, except that the amount transferred for any member or beneficiary shall not be more than the amount required to fund the recomputations and adjustments required by this section for the member or beneficiary. The defined benefit program equity balance for a member or beneficiary of a deceased member shall equal the sum of the member's employee and employer account balances on the earlier of June 30, 1999 or the member's retirement or death, less the monthly annuity payments to a retired member or beneficiary, plus the earnings on the average balance of that amount for a plan year.

I. If a member retired before July 1, 1999, elected to receive benefits pursuant to section 38-771, subsection C, paragraph 2 and did not make all contributions pursuant to section 38-771, subsection E because of the limitations prescribed in section 38-747, subsection E, the member has the option of receiving the employer contributions prescribed in subsection C, paragraphs 3 and 5 of this section in a lump sum payment. If the retired member elects to receive a lump sum payment, ASRS shall pay the amount on or before July 1, 2000 and the amount shall be deducted from the member's account when computing the annuity benefits to which the member is otherwise entitled pursuant to this section. In no case shall the payment under this subsection duplicate the payment under subsection G of this section. Section 38-770 applies to a payment to a member under this subsection if the payment is substantially larger or smaller than the monthly benefit payable by ASRS to the member.

J. Contributions made to ASRS by a member and the member's employer pursuant to subsection F of this section, other than employer contributions required pursuant to subsections G and H of this section, shall not exceed, in any one limitation year, the limits prescribed in section 38-747, subsection E. If for any reason the member and applicable employer contributions made pursuant to subsection F of this section would at the time the contributions are due, taking into account other annual additions due to ASRS for the limitation year, exceed the limits prescribed in section 38-747, subsection E, the amount to be paid by the member and the member's employer pursuant to subsection F of this section, other than employer contributions required pursuant to subsections G and H of this section, shall be proportionately reduced and the reduction shall be carried into the succeeding limitation year and paid by the member and the member's employer within thirty days after the beginning of that limitation year, unless the limits prescribed in section 38-747, subsection E would again be exceeded. If the limits are exceeded again, the procedure prescribed in this subsection shall be repeated until all of the contributions are made. If more than one employer is contributing on behalf of a member, the reduction and contributions in succeeding years shall be proportionately allocated among the employers. If a member retires before making all contributions pursuant to this section because of the limitations prescribed in section 38-747, subsection E, the member's benefits pursuant to this section shall be computed only with reference to the contributions actually made. For the purposes of this subsection, "limitation year" has the same meaning prescribed in section 38-769.

K. Unless otherwise provided in this section, a member who receives retirement benefits pursuant to this section and section 38-771 is subject to conditions that are equivalent to those imposed before the member's transfer from the defined contribution program administered by ASRS to the defined benefit program established by this article. Those conditions include the following:

1. A member who attains sixty-five years of age may retire and, on application, shall receive a life annuity derived from the member's prior service credit, if any, together with a life annuity derived from the member's retirement account. The annuity is payable in equal monthly installments. The amount of the installments is based on the age of the member at the date of commencement of retirement and is determined by the interest and life expectancy tables applicable at the date of the commencement of retirement.

2. If a retired member who is receiving retirement benefits pursuant to this section dies before receipt of annuity payments in an amount equal to the member's retirement account balance immediately before retirement, ASRS shall pay the member's designated beneficiary or estate in a lump sum the difference between the retirement account balance and the total amount of annuity payments received.

3. A member who attains sixty-five years of age with at least five years of creditable service may retire and, on application, may elect to receive in lieu of the annuity payments from the member's prior service, if any, together with a life annuity derived from the member's retirement account as provided in paragraph 1 of this subsection, the actuarial equivalent of those retirement benefits under one of the options established by the board.

4. A member who attains sixty years of age with at least five years of creditable service may retire and, on application, may receive a life annuity derived from the

actuarial equivalent of the member's prior service credit, if any, together with a life annuity derived from the member's retirement account. The annuity shall be determined and paid in the manner set forth in paragraph 1 of this subsection.
5. In lieu of the retirement benefits pursuant to paragraph 4 of this subsection, on application, a member may elect to receive the actuarial equivalent of those retirement benefits under one of the options established by the board.
6. If a retired member who is receiving retirement benefits pursuant to this section is engaged to work by an employer for twenty or more weeks in a fiscal year and twenty hours or more a week, the member's retirement benefit payments pursuant to this section are suspended until the member terminates employment. On return to employment, the member shall accrue benefits pursuant to this section, unless the member elects to be covered by the defined benefit program established by this article. If a formerly retired member elects to be covered by the defined benefit program established by this article, the formerly retired member shall be an active member in the defined benefit program with respect to all service performed after the member's return to work and shall not accrue additional benefits pursuant to this section. Notwithstanding the other provisions of this paragraph, if a retired member begins or returns to employment as an elected official or to any other type of service or employment that does not require the retired member to begin active membership in the defined contribution program administered by ASRS or the defined benefit program established by this article, the payment of retirement benefits pursuant to this section shall not be terminated, withheld or interrupted because of beginning or returning to the service or employment or holding the elected office, unless the formerly retired member actually elects to recommence active participation in the defined benefit program established by this article or pursuant to this section.
7. On termination of employment of a retired member previously receiving retirement benefits pursuant to this section, ASRS shall reinstate the member's retirement benefits pursuant to this section and, on reinstatement of retirement benefits, the benefit shall be recomputed on the basis of the member's attained age and shall be adjusted for retirement benefits previously received and additional contributions, interest and supplemental credits accrued during the period of employment. On this reinstatement of retirement benefits, if the member elected to be covered by the defined benefit program established by this article on the member's return to employment, the member is also entitled to receive retirement benefits pursuant to the defined benefit program established by this article for the credited service earned by the member after the member's active membership in the defined benefit program established by this article began.
L. ASRS shall handle all retirement accounts of members who elect retirement benefits provided pursuant to this section and all member and employer contributions attributable to those members in the same manner as retirement accounts and contributions that are part of the defined contribution program administered by ASRS. Retirement accounts of members who elect to receive retirement benefits pursuant to this section are eligible for interest and supplemental credits on the same basis as members who retired under the defined contribution program administered by ASRS.
M. The receipt of retirement benefits by a member pursuant to this section is a waiver of all claims and demands by the member that the retirement benefits are

less than the amount of retirement benefits payable to the member under the defined contribution program administered by ASRS if the member had remained a member of the defined contribution program administered by ASRS.
N. The board may administer and interpret this section in order to prevent any duplication of benefits provided by ASRS and the defined contribution program administered by ASRS and to provide all eligible members and beneficiaries with the benefits they are entitled to under the laws of this state.
O. For purposes of this section:
1. "Beneficiary" means the individual designated by the member in writing on forms approved by ASRS to receive benefits pursuant to this article after the death of the member.
2. "Creditable service" means service after April 8, 1953 in a position not subject to the defined contribution program administered by ASRS, prior service and membership service.
3. "Member's employer" means an employer who compensated the member during a period when the member's contributions were less than seven per cent.
4. "Pension" means equal monthly installments that are derived from a member's prior service credits and that are payable during the member's lifetime after retirement.
5. "Prior service" means service for this state or a political subdivision before membership in the defined contribution program administered by ASRS.
6. "Prior service credits" means the amount that is allowed for services before membership in the defined contribution program administered by ASRS and that is payable as a pension on retirement.
7. "Retirement account" means the combined member and employer contributions with applicable interest and supplemental credits on the contributions as computed pursuant to subsection C of this section.
8. "Service" means any compensated employment by the state or a political subdivision and includes periods of nonpaid leave, including military leave, provided employment has not been terminated at the commencement of the leave period and employment is state service for retirement purposes or service for any political subdivision establishing a defined contribution program administered by ASRS.

38-774. Excess benefit arrangement
A. A separate unfunded governmental excess benefit arrangement is established outside of and apart from the trust fund established by section 38-712 to pay members benefits that are otherwise payable by ASRS and that exceed the limitations on benefits imposed by section 415 of the internal revenue code. The board shall administer this excess benefit arrangement as a qualified governmental excess benefit arrangement pursuant to section 415(m) of the internal revenue code.
B. The board may adopt rules to implement this section subject to the following:
1. Benefits under this section are subject to section 38-773 and section 38-791, subsections D and F and are exempt from execution to the same extent as provided in section 38-792.
2. Contributions to this arrangement are not held in trust and shall not be commingled with other monies of ASRS.

C. A member is entitled to a monthly benefit under this section in an amount equal to the amount that the member's benefit that is payable by ASRS has been reduced by the limitation on benefits imposed by section 38-769 and section 415 of the internal revenue code. The benefit that is payable by this arrangement shall be paid at such time or times and in such form as the benefit under ASRS would be paid.
D. The benefit that is payable under this section shall be paid with employer contributions that would otherwise be made to ASRS under section 38-737. In lieu of the employer contributions being paid to the trust fund established by section 38-712, an amount determined by ASRS as necessary to pay benefits under this section shall be paid on a monthly basis to a separate account established by the board for this arrangement and may include amounts needed to pay reasonable and necessary expenses of this arrangement. The director may invest the monies in this account in suitable short-term investments between receipt of the monies and disbursement of the monies. The amount shall be paid to the account at least fifteen days before a disbursement is to be made under this section.
E. A member shall not directly or indirectly elect to defer compensation to purchase benefits provided under this section.
F. This section shall not be construed as requiring an employer or ASRS to purchase any investment or any contract to secure any obligations under this section. If an employer or ASRS purchases an investment or contract that the employer or ASRS earmarks to pay benefits under this section, title to and beneficial ownership of the investment or contract remain at all times in the employer or ASRS, and the member and the member's beneficiaries, if any, do not have any proprietary interest in any specific assets of the employer or ASRS. Any rights of the member and the member's beneficiaries, if any, to payment of any amounts under this section shall be those of general unsecured creditors of the employer or ASRS. This section and any action taken pursuant to this section by the employer or ASRS do not create and shall not be construed to create an irrevocable trust of any kind.

**ARIZONA STATE BOARD OF OPTOMETRY (R-16-0102)**
Title 4, Chapter 21, Article 1, General Provisions; Article 2, Licensing Provisions; Article 3, Standards; Recordkeeping; Rehearing or Review of Board Decision

| | |
|---|---|
| Amend: | R4-21-101; R4-21-102; R4-21-103; R4-21-201; R4-21-202; R4-21-203; R4-21-205; R4-21-206; R4-21-208; R4-21-209; R4-21-210; R4-21-211; R4-21-302; R4-21-305; R4-21-306; R4-21-308; Table 1 |
| New Section: | R4-21-205.1 |
| Repeal: | R4-21-213 |

**GOVERNOR'S REGULATORY REVIEW COUNCIL**
**M E M O R A N D U M**

**MEETING DATE: January 5, 2016** **AGENDA ITEM: E-2**

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**TO:** Members of the Governor's Regulatory Review Council ("Council")

**FROM:** Chris Kleminich, Staff Attorney

**DATE:** December 18, 2015

**SUBJECT:** **ARIZONA STATE BOARD OF OPTOMETRY (R-16-0102)**
Title 4, Chapter 21, Article 1, General Provisions; Article 2, Licensing Provisions; Article 3, Standards; Recordkeeping; Rehearing or Review of Board Decision

Amend: R4-21-101; R4-21-102; R4-21-103; R4-21-201; R4-21-202; R4-21-203; R4-21-205; R4-21-206; R4-21-208; R4-21-209; R4-21-210; R4-21-211; R4-21-302; R4-21-305; R4-21-306; R4-21-308; Table 1

New Section: R4-21-205.1

Repeal: R4-21-213

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## General Comments

### Purpose of the Agency and Summary of What the Rulemaking Does

The purpose of the Arizona State Board of Optometry (Board) is to protect the public health and safety by "assur[ing] the competency of optometric practitioners." Laws 1993, Ch. 21, § 3. The Board is comprised of seven members, five of which are licensed optometrists, and two of which are public members.

This rulemaking seeks to amend sixteen rules and one table, create one new rule, and repeal one rule. The Board is amending the rules to improve consistency with statutes and current industry practice. The rulemaking updates language and terminology to improve clarity and to conform to 2013 and 2014 statutory changes.

**Article Contents, Including the Subject Matter of Each Rule Affected**

Article 1 contains three rules and one table, all of which are amended by this rulemaking. The rules relate to definitions; fees and other charges; time-frames for Board action; and time-frames in calendar days.

Article 2 contains thirteen rules, nine of which are amended, and one of which are repealed, by this rulemaking. The rules relate to licensure by examination; licensure by endorsement; jurisprudence examinations; license renewal; license reinstatement and applications for licensure following license expiration; certificates of special qualification and pharmaceutical agent numbers; continuing education requirements; approval of continuing education; audits of compliance with continuing education requirements; and registration and renewal of nonresident contact-lens dispensers.

Article 3 contains nine rules, four of which are amended by this rulemaking. The rules relate to advertising; recordkeeping; optometric prescription standards and release to patients; and anaphylactic-related supplies.

**Year that Each Rule was Last Amended or Newly Made**

Section 201 was last amended on November 16, 2010. All other rules were last amended or newly made on February 2, 2008.

**Proposed Action**

The following is a non-exhaustive summary of the actions being taken by the Board in this rulemaking:

- Section 101: Definitions are being added, removed, and revised to reflect amendments being made to other sections.
- Section 102: The initial license issuance fee is being increased from $400 to $450, and the license renewal fee, charged biennially, is being increased from $400 to $450. In addition, subsection (C), related to fees for nonresident dispensers of contact lenses, is being removed; A.R.S. § 32-1774 was amended in 2013 to remove the Board's responsibility to license nonresident dispensers of contact lenses. Technical changes are also being made to the rule.
- Section 103: Subsection (D), related to extensions on time frames for Board action, is being amended. Instead of the 40 day extension period that the rule currently provides for, which is inconsistent with A.R.S. § 41-1075(B), applicants will be able to request an extension of no more than 25% of the overall time frame. Technical changes are also being made to the rule.
- Section 201: In subsection (B)(9)(c), the "High School" verification requirement is being removed as the Board has deemed it irrelevant. Subsection (B)(14)(h) is being removed, as the pertinent text has been consolidated into the amended subsection (B)(14)(g). Technical changes are being made to subsection (C).

- Section 202: Subsection (C)(4) is being added to allow for licensure by endorsement through the use of a Council on Endorsed Licensure Mobility for Optometrists (CELMO) certificate. CELMO certificates are intended to assist members of the Association of Regulatory Boards of Optometry (ARBO) in review of applications for licensure from established practitioners in other jurisdictions. Technical changes are also being made to the rule.
- Section 203: Subsection (B) is being amended to allow an applicant to take the jurisprudence examination up to six months prior to submitting an application. Currently, an application must be submitted to the Board prior to taking the exam. Subsection (C) is being added to allow the jurisprudence examination to be taken at a National Board of Examiners in Optometry (NBEO) testing center or at another proctored testing center, instead of solely at the Board's Phoenix office. This amendment is intended to alleviate costs and time constraints for doctors applying to be licensed in Arizona. Technical changes are also being made to the rule.
- Section 205: Subsection (B)(5)(i) is being removed, as the pertinent text has been consolidated into the amended subsection (B)(5)(h). Technical changes are also being made to the rule.
- Section 205.1: The Board is adding this rule to clarify cardiopulmonary resuscitation (CPR) requirements for optometrists that hold a pharmaceutical agent certificate.
- Section 206: Clarifying changes are being made to the rule.
- Section 208: Clarifying changes are being made to the rule.
- Section 209: The Board is making a number of changes to this rule, related to CE requirements for licensees. The Board is retaining its requirement for licensees to complete 32 hours of CE biennially. In subsection (A)(1), the Board is increasing, from four hours to eight hours, the amount of CE that must be completed in the area of diagnosis, treatment, and management of disease of the human eye. In subsection (A)(2), the Board is clarifying that CE obtained through self-instructed media must be approved by the Council on Optometri**c** Practitioner Education (COPE). In subsection (A)(6), the Board is clarifying that no more than one hour of CE can be claimed for a CPR certification class. In Subsection (F), the Board is now requiring that licensees use the ARBO's "OE Tracker" program to submit CE hours.[1] Technical and clarifying changes are also being made to the rule.
- Section 210: A technical change is being made to subsection (A)(2)(b).
- Section 211: Subsections (B) and (C) are being added to clarify the role of the OE Tracker in the Board's process for auditing the CE hours of licensees.
- Section 213: The Board is repealed the rule due to 2013 changes to A.R.S. § 32-1774, which removed the Board's responsibility to license nonresident dispensers of contact lenses. Pursuant to A.R.S. § 32-1771(A), all contact lens dispensers in Arizona must follow the federal Fairness to Contact Lens Consumers Act (FCLCA).
- Section 302: The Board is adding subsection (D), which provides that, in accordance with A.R.S. § 32-3213, an advertisement for health care services that includes a licensee's name must identify the title and type of license that the licensee holds.

[1] For complete access to OE Tracker, licensees must pay a fee to the ARBO. Currently, this fee is $20 for a one-year subscription to the service, or $45 for a three-year subscription to the service. If licensees do not wish to pay this fee, there is no charge to have CE attendance uploaded to the program, so long as that information is submitted electronically to OE Tracker by the CE provider. For more information, see https://www.arbo.org/oet_info.php.

- Section 305: Clarifying changes are being made to subsection (F).
- Section 306: Subsection (E) is being added to provide additional language regarding the release of prescriptions. The Board indicates that the changes provide protection to the public by not allowing licensees to put stipulations or provisions, such requirements for additional purchases or fees, on the release of a contact lens or eyeglass prescription. Clarifying changes are also being made to the rule.
- Section 308: Clarifying changes are being made to the rule.

**Summary of Reasons for the Proposed Action**

As stated above, the Board believes that the amendments are necessary to improve consistency with statutes and current industry practice.

**Exemption or Request and Approval for Exception from the Moratorium**

The Board received approval for an exception from Executive Order 2015-01 on July 10, 2015. Governor Ducey's office noted that this exception did not extend to the Board's proposed amendment to allow licensees to earn up to one hour of continuing education (CE) by attending a Board meeting. Consequently, the Board has excluded that proposal from this rulemaking.

**Substantive or Procedural Concerns**

None.

**1. Are the rules legal, consistent with legislative intent, and within the agency's statutory authority?**

Yes. As general authority for the rules, the Board cites to A.R.S. § 32-1704(A), under which the Board "shall adopt, and may amend, rules consistent with this chapter [Title 32, Chapter 16, Optometry] governing the practice of the profession of optometry, for the performance of its duties under this chapter and for the examination of applicants for licenses."

As specific authority for the rules, the Board cites to the entirety of Title 32, Chapter 16. Staff would highlight A.R.S. § 32-1704(D), under which the Board "shall adopt rules for criteria it must use to approve continuing education programs for licensees." In addition, specific authority for the fees charged by the Board can be found in A.R.S. § 32-1727.

**2. Are the rules written in a manner that is clear, concise, and understandable to the general public?**

Yes. As a whole, the rules written in a clear, concise, and understandable manner.

**3. Does the agency adequately address the comments on the proposed rules and any supplemental proposals?**

Yes. The Board received and responded to public comments on the rules over much of 2014 and 2015.

Most of the public interest in this rulemaking was generated by proposed amendments to sections 209 and 210 that were included in the Board's Notice of Proposed Rulemaking. A petition, opposed to the amendments, was submitted with roughly 250-300 unique signatures from licensees. The Board also received 43 individual public comments that expressed opposition to the rule changes.[2] One petition was submitted in support of the amendments, with nine signatures from licensees. The amendments would have allowed licensees to only count, towards the CE requirement for license renewal, hours spent in CE courses approved by the Council on Optometric Practitioner Education (COPE). Under the existing rules, CE courses can be counted as approved hours even if the course provider has chosen to not seek approval from COPE, as long as the course has been approved by the Board. The commenters and petitioners that expressed opposition to the rule changes are primarily members of the Central Arizona Optometric Society (CAOS), a local group which provides CE opportunities for licensees. CAOS members argued that a requirement to seek approval from COPE for their quarterly lectures would be a significant burden on the organization, and would not necessarily be feasible. Because of the overwhelmingly negative response from the regulated community, the Board has elected to revert back to the existing rule language for the relevant portions of sections 209 and 210.

The Board received eight comments that, in whole or in part, related to issues other than COPE approval of CE programs:

- Four commenters expressed concern about the new requirement to use OE Tracker to report CE hours. The Board has responded that use of OE Tracker is necessary to allow the Board to audit the CE activities of 100% of licensees.
- Three commenters expressed opposition to the increase in renewal fees, while one commenter indicated that the increase seemed appropriate.
- Dr. Karen Walker asked a number of technical and clarifying questions about the rules, both in writing and at the oral proceeding. After review, staff believes that the Board adequately addressed Dr. Walker's comments.
- Dr. Tina Cooley-Staley asked five technical and clarifying questions about the rules via e-mail. After review, staff believes that the Board adequately addressed Dr. Cooley-Staley's comments.

**4. Are the final rules a substantial change, considered as a whole, from the proposed rules and any supplemental proposals?**

No. As discussed above, after the Board received public feedback on the proposed rules, it elected to revert back to existing rule language for portions of sections 209 and 210. Staff does

[2] There is some overlap between these numbers. Most, if not all, of the individual commenters also signed the petition in opposition to the amendments.

not believe that the final rules, when considered as a whole, constitute a substantial substantive change from the proposed rules. Non-substantive technical changes have also been made, at the request of Council staff.

**5. Does the preamble disclose a reference to any study relevant to the rules that the agency reviewed and either did or did not rely on in the agency's evaluation of or justification for the rules?**

No. The Board indicates that it did not review or rely upon any study for the rulemaking.

**6. Are the rules more stringent than corresponding federal law and, if so, is there statutory authority that allows the agency to exceed the requirements of federal law?**

No. The Board indicates that no federal laws directly correspond to the rules.

**7. Do the rules require a permit or license and if so, does the agency use a general permit or is any exception applicable under A.R.S. § 41-1037?**

Yes. The Board indicates that the licenses issued by the Board are general permits, as they are issued to qualified individuals or entities to conduct activities that are substantially similar in nature.

**8. Do the rules establish a new fee or contain a fee increase?**

Yes. The Board is increasing its initial license issuance fee from $400 to $450, and is increasing its license renewal fee, charged biennially, from $400 to $450. Staff's research indicates that these fees were last increased in 1998. The Board believes that the fee increase is necessary in order to continue to generate sufficient revenue to fund its operations. The Board indicates that its operating costs have steadily increased over the past ten years. Additionally, the Board states that there is an urgent need to update and maintain information technology (IT) programs affecting the Board's online payment system and licensee database. In FY 2016, the Board notes that the JLBC approved a one-time appropriation adjustment of $23,000 to cover the need for these improvements.

**9. Conclusion**

The Board requests the usual 60-day delayed effective date for the rules. This analyst recommends approval of the rules.

**GOVERNOR'S REGULATORY REVIEW COUNCIL**
**M E M O R A N D U M**

**MEETING DATE: January 5, 2016** **AGENDA ITEM: E-2**

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**TO:** Members of the Governor's Regulatory Review Council ("Council")

**FROM:** GRRC Economist

**DATE:** December 18, 2015

**SUBJECT:** **ARIZONA STATE BOARD OF OPTOMETRY (R-16-0102)**
Title 4, Chapter 21, Article 1, General Provisions; Article 2, Licensing Provisions; Article 3, Standards; Recordkeeping; Rehearing or Review of Board Decision

Amend: R4-21-101; R4-21-102; R4-21-103; R4-21-201; R4-21-202; R4-21-203; R4-21-205; R4-21-206; R4-21-208; R4-21-209; R4-21-210; R4-21-211; R4-21-302; R4-21-305; R4-21-306; R4-21-308; Table 1

New Section: R4-21-205.1

Repeal: R4-21-213

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I reviewed the economic, small business, and consumer impact statement (hereafter referred to as EIS) and make the following comments. These comments are made to assist the Council in its review and may be used as the Council determines.

**GRRC Economist comments:**

The rule amendments reviewed by the department are generally intended to: 1) align rule with statute; 2) clarify definitions; 3) modify the continuing education tracking to online and adding CPR requirements; 4) allow for a fee increase; and 5) amend extension timeframes for response to deficiency notification. The proposed amendments would increase the renewal and issuance fees by $50, or 12.5%, to $450. The history of license and renewal issuances for FY 13 to FY 15 is below:

| | FY 13 | FY 14 | FY 15 |
|---|---|---|---|
| Licenses Issued | 42 | 61 | 44 |
| Renewals Issued | 431 | 451 | 460 |

The Board has certified that the Joint Legislative Budget Committee has not been notified because the number of new full-time employees necessary to implement and enforce the rule is zero. Notice of new FTEs is required by A.R.S. § 41-1055(B)(3)(a).

1. **Costs and Benefits for:**

**a. The implementing agency:**

The proposed amendments will not result in increased costs; however, the $50 fee increase will result in a 12.5% increase in license and renewal fee revenue.

**b. Political subdivisions:**

The amendments do not directly affect political subdivisions.

**c. Businesses:**

The amendments do not directly affect businesses.

**d. Small businesses:**

The amendments do not directly affect small businesses. While some optometrists may practice in a small business setting, the proposed rule amendments impact the optometrists directly rather than the small business practice.

**e. Consumers directly affected by the rulemaking:**

The amendments do not result in any cost for the public; however, consumers benefit from efficient and effective rules regarding optometry practice and continuing education of practitioners.

**2. Do the probable benefits outweigh the probable costs?**

Based on the information provided, the Board indicates that the benefit of the proposed amendments outweigh any probable costs.

**3. Analysis of methods to reduce the small business impact:**

The amendments do not directly affect small businesses. While some optometrists may practice in a small business setting, the proposed rule amendments impact the optometrists directly rather than the small business practice. Therefore, modifications or exemptions to mitigate the impact of the rules on small business is not applicable.

**4. The probable effect on state revenues:**

As a 90/10 agency, 10% of the Board's collected revenues are deposited into the General Fund. Therefore, the fee increase will result in increased General Fund revenue. Based on FY 15 licensing and renewal counts, the increase in revenue to the General Fund would be $2,520 and the increase in revenue to the Optometry Board would be $22,680. This is based on a total of 504 licenses issued and renewed and assuming a total revenue increase of $25,200 resulting from a fee of $450 rather than $400.

**5. Analysis of any less intrusive or less costly alternative methods:**

The Board did not consider other alternatives because the proposed rule amendments represent the most cost effective and efficient method of complying with federal law and state statute.

**6. Whether an analysis was submitted to the agency regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states:**

No analysis was submitted that compares the rule's impact of the competiveness of businesses in this state to the impact on businesses in other states.

**7. A description of any data on which a rule is based with an explanation of how the data was obtained and why the data is acceptable data, and the methods used by the agency to evaluate the costs and benefits in the EIS.**

The Board indicates that no outside data or studies were used in the development of the proposed rule amendment.

**8. Conclusion:**

The submitted economic, small business and consumer impact statement is generally accurate, and contains the information required for compliance with A.R.S. §§ 41-1035, 41-1052(D)(1-3), and 41-1055. This analyst recommends that the amendments be approved.

**Douglas A. Ducey**
Governor

**John Chrisagis, O.D.**
President

**Marla Husz, O.D.**
Vice President

***Arizona State Board of Optometry***
1400 West Washington, Suite 230
Phoenix, AZ 85007

**Margaret Whelan**
Executive Director

Telephone (602) 542-8155 • Fax (602) 542-3093

December 8, 2015

Ms. Nicole A. Ong
The Governor's Regulatory Review Council
100 North 15th Avenue, Ste. 402
Phoenix, AZ 85007

**Re: A.A.C. Title 4. Professions and Occupations, Chapter 21. Board of Optometry**

Dear Ms. Ong:

The attached final rules package is submitted for review and approval by the Council. The following information is provided for Council's use in reviewing the rule package:

A. Close of record date:
The rulemaking record was closed on September 25, 2015, following a period for public comment and an oral proceeding. This rule package is being submitted within the 120 days provided by A.R.S. §41-1024(B).

B. Relation of the rulemaking to a five-year-review report:
The rulemaking does not relate to a five-year-review report.

C. New fee:
The rulemaking does not establish a new fee.

D. Fee increase:
The existing fees for a renewal license are increased by $50.00. All other license fees and other fees to the Board remain the same with no increase.

E. Immediate effective date:
An immediate effective date is not requested.

F. Certification regarding studies:
I certify that the preamble accurately discloses that the Board did not review or rely on a study in its evaluation of or justification for any rule in this rulemaking.

G. Certification that the preparer of the EIS notified the JLBC of the number of new fulltime employees necessary to implement and enforce the rule:
I certify that none of the rules in this rulemaking will require the Agency to employ a new full-time employee; therefore, no notification was required to be provided to JLBC.

H. List of documents enclosed:

a. Cover letter signed by the Executive Director;
b. Notice of Final Rulemaking including the preamble, table of contents, and rule text;
c. Economic, Small Business, and Consumer Impact Statement

Sincerely,

Margaret Whelan
Executive Director

**NOTICE OF FINAL RULEMAKING**

**TITLE 4. PROFESSIONS AND OCCUPATIONS**

**CHAPTER 21. BOARD OF OPTOMETRY**

**PREAMBLE**

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

| | |
|---|---|
| **Article 1:** | |
| R4-21-101 | Amend |
| R4-21-102 | Amend |
| R4-21-103 | Amend |
| **Article 2:** | |
| R4-21-201 | Amend |
| R4-21-202 | Amend |
| R4-21-203 | Amend |
| R4-21-205 | Amend |
| R4-21-205.1 | New Section |
| R4-21-206 | Amend |
| R4-21-208 | Amend |
| R4-21-209 | Amend |
| R4-21-210 | Amend |
| R4-21-211 | Amend |
| R4-21-213 | Repeal |
| **Article 3:** | |
| R4-21-302 | Amend |
| R4-21-305 | Amend |
| R4-21-306 | Amend |
| R4-21-308 | Amend |

**2. Citations to the agency's statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):**

Authorizing statute: A.R.S. §32-1704(A)
Implementing statute: A.R.S. §§32-1701 et seq.

**3. The effective date of the rule:**

The rules will become effective 60 days after filing with the Secretary of State.

**a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):**

Not applicable.

**b. If the agency selected a date later than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date**

**as provided in A.R.S. § 41-1032(B):**

Not applicable.

**4. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:**

Notice of Rulemaking Docket Opening: 20 A.A.R. 2981 (November 14, 2014)
Notice of Proposed Rulemaking: 4 A.A.C. 21 3484 (December 19, 2014)

**5. The agency's contact person who can answer questions about the rulemaking:**

Name: Margaret Whelan, Executive Director

Address: Arizona State Board of Optometry
1400 West Washington, Ste. 230
Phoenix, AZ 85007

Telephone: (602) 542-8155

Fax: (602) 542-3093

E-mail: margaret.whelan@optometry.az.gov

Website: www.optometry.az.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:**

The Board is updating its rules to make them more clear, concise, and understandable; consistent with statute and current agency and industry practice. This rulemaking will update language and terminology used in the rules to improve consistency and clarity as well as conform to statutes amended in the 2013 legislative session (50th Legislature, 1st Regular Session) and 2014 legislative session (51st Legislature, 2nd Regular Session).

**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:**

None.

**8. 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.

**9. A summary of the economic, small business, and consumer impact:**

The proposed fee increase in aggregate is subject to the total number of license renewals and is estimated, based on current number of licensees, to generate possible revenue to both the Board and the State's General Fund for the requisite operating expenses of the Board in the estimated amount of
$25, 942 annually with $2,882 to the State General Fund. Such fees will be a cost to current licensees only. Some optometrists may practice in a small business setting however, the proposed rule amendments impact the

optometrists themselves rather than the small business practice and therefore have minimal economic impact to current licensees only. There is no economic impact to the consumer/public.

**10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:**

No substantial substantive changes have been made to the rules. Non-substantive technical changes have been made at the recommendation of GRRC staff. In addition, after a great deal of public feedback for portions of sections 209 and 210, the Board is reverting the rule back to existing language. The Board took all comments under advisement and compromised on some of the changes to the rules regarding COPE and OE Tracker. The Board did not mandate COPE as originally planned but did keep the OE Tracker requirement in order to audit 100% of its licensees, adding a provision in the amended rule that should any of the required CE hours not be reported to OE Tracker, a licensee could submit certificates of attendance to the Board for those particular courses.

**11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:**

Comments were received by the regulated public. Main concerns were use of COPE and OE Tracker. Some commenters were concerned that mandating COPE would negatively impact the local optometric associations' ability to give Continuing Education ("CE") courses as they would not utilize the COPE process since they do not charge members for the CE courses. Other commenters had concern over the use of OE Tracker for auditing purposes claiming that the reporting was not accurate. Miscellaneous comments related and unrelated to the proposed rules changes were also received and addressed by the Board. Those comments include wording changes to proposed language; specifically R4-21-306(E)(b) to add "of what was written on the prescription" however, this would not be a reasonable change as the prescription already must be filled as written; change would be redundant and confusing. In R4-21-308(A)(B), a question was raised about doctors who use an auto-injector pen for anaphylaxis getting an "injection certificate". Under the current statutes/scope of practice, Arizona licensed optometrists do not have injection authority other than the emergency auto-injectors; therefore, a rule like that would be illegal as it would have no statutory authority to support or permit it. Another comment submitted was inquiring about addressing online entities and other professions who are not optometrists from practicing optometry "in Arizona" over the internet. Again, this would need some statutory authority to address such an issue. A comment regarding wanting to charge an additional fee for taking interpupillary distance ("PD") was submitted. Under the current rules, a PD is required as part of the prescription and cannot generate an extra fee to the patient for providing it. Even when the PD requirement is removed, it still would not be appropriate to charge a fee for taking a PD as a doctor may still choose to include it on a prescription for specificity of the prescription; but it is never a stand-alone charge and a PD can be taken by the optometrist or an optician.

**12. 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:**

**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. The following are general "permits": Licensure by Examination as required under R4-21-201; Licensure by Endorsement as required under R4-21-202; License Renewal registration as required under R4-21-205; and Certificate of Special Qualification as required under

R4-21-208.

**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 of the competitiveness of business in this state to the impact on business in other states:**

None.

**13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rule:**

None.

**14. Whether the rule was previously made, amended or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:**

Not applicable.

**15. The full text of the rules follows:**

# ARIZONA ADMINISTRATIVE CODE

## ARTICLE 1. GENERAL PROVISIONS

**R4-21-101 Definitions**

In addition to the definitions in A.R.S. §32-1701 ~~and 32-1771~~, the following apply to this Chapter:

"Accredited" means approved by the ACOE.

"ACOE" means the Accreditation Council on Optometric Education.

"Active license" means a license that is current and has not expired.

"Advertisment" means a written, oral, or electronic communication that an ordinary person would perceive is designed to influence, directly or indirectly, a decision regarding ophthalmic goods or optometric services.

"Applicant" means:

An individual who applies to the Board under A.R.S. §§32-1722 or 32-1723 and A.A.C. R4-21-201 or R4-21-202 for a license to practice the profession of optometry, but has not been granted the license;

A licensee who applies under A.R.S. §32-1726 and R4-21-205 for license renewal;

A licensee who applies under A.R.S. §32-1728 and R4-21-208 for a pharmaceutical ~~agents~~ agent number;

A licensee or provider of Continuing Education that applies for approval of a Continuing Education under R4-21-210~~; or~~

~~A person who applies to the Board under A.R.S. § 32-1774 and R4-21-213 for registration as a non-resident dispenser of replacement soft contact lenses.~~

"Application package" means the forms, documents, and fees that the Board requires an applicant to submit or have submitted on the applicant's behalf.

"Approved Continuing Education" means a planned educational experience relevant to the practice of the profession of optometry that the Board determines meets the criteria at R4-21-210.

"ARBO" means the Association of Regulatory Boards of Optometry.

"Audit" means the selection of licensees and process of reviewing documents for verification of satisfactory completion of Continuing Education requirements during a specified time period.

"CPR" means Cardiopulmonary Resuscitation.

"CELMO" means the Council on Endorsed Licensure Mobility for Optometrists.

"Certificate of special qualification" means a document that specifies whether the holder, who was licensed by the Board before July 1, 2000, and has not completed a course of study approved by the Board, may

prescribe, administer, and dispense a pharmaceutical agent and if so, whether the holder may prescribe, administer, and dispense:

A topical diagnostic pharmaceutical agent only, or

Topical diagnostic and topical therapeutic pharmaceutical agents.

"Continuing Education" means planned, organized learning acts designed to maintain, improve, or expand a licensee's knowledge and skills in order for the licensee to develop new knowledge and skills relevant to the enhancement of practice, education, or theory development to improve the safety and welfare of the public.

"COPE" means the Council on Optometric Practitioner Education.

"Course of study," as used in A.R.S. §32-1722, means education approved by the Board under R4-21-207 that qualifies an optometrist to prescribe, administer, and dispense topical diagnostic, topical therapeutic, and oral pharmaceutical agents.

"Injectable Epinephrine ~~auto-injector~~" means an intramuscular dose of epinephrine used for emergency treatment of an allergic reaction and delivered by a spring-loaded syringe.

"Good cause" means a reason that is substantial enough to afford a legal excuse.

"Hour of Continuing Education" means no less than 50 minutes of learning in one hour of time.

"Incompetence," as used in A.R.S. §32-1701(8), means lack of professional skill, fidelity, or physical or mental fitness, or substandard examination or treatment while practicing the profession of optometry.

"Low vision" means chronic impairment to vision that significantly interferes with daily routine activities and cannot be adequately corrected with medical, surgical, or therapeutic means or conventional eyewear or contact lenses.

"Low-vision rehabilitation" means use of optical and non-optical devices, adaptive techniques, and community resources to assist an individual to compensate for low vision in performing daily routine activities.

"Negligence," as used in A.R.S. § 32-1701(8), means conduct that falls below the standard of care for the protection of patients and the public against unreasonable risk of harm and that is a departure from the conduct expected of a reasonably prudent licensee under the circumstances.

"OE Tracker" means the ARBO Online Education Tracker used to electronically track Continuing Education hours taken by a licensee.

"Oral pharmaceutical agent," as used in A.R.S. §32-1728, means an ingested prescription or non-prescription substance used to examine, diagnose, or treat disease of the eye and its adnexa.

"Party" has the same meaning as prescribed in A.R.S. §41-1001.

"Plano lenses" means contact lenses that have cosmetic function only.

"Practice management" means the study of management of the affairs of optometric practice.

"Self-instructed media" means educational material in a printed, audio, video, ~~or~~ electronic ~~format~~ or distance learning format.

"Topical diagnostic pharmaceutical agent," as used in A.R.S. §32-1728, means an externally applied prescription or non-prescription substance used to examine and diagnose disease and conditions of the eye and its adnexa.

"Topical therapeutic pharmaceutical agent," as used in A.R.S. §32-1728, means an externally applied prescription or non-prescription substance used to treat disease of the eye and its adnexa.

"Vision rehabilitation" means an individualized course of treatment and education prescribed to improve conditions of the human eye or adnexa or develop compensatory approaches. Vision rehabilitation is designed to help individuals learn, relearn, or reinforce specific vision skills, including eye movement control, focusing control, eye coordination, and the teamwork of the two eyes. Vision rehabilitation includes, but is not limited to optical, non-optical, electronic, or other assistive treatments.

**R4-21-102 Fees and other Charges**

**A.** The Board shall collect the fees established by A.R.S. §32-1727.

**B.** Under the authority provided at A.R.S. §32-1727, the Board establishes and shall collect the following fees:

1. License issuance fee of ~~$400~~ $450, which is prorated from date of issuance to date of renewal;

2. Biennial license renewal fee of ~~$400~~ $450; and

3. Late renewal fee of $200.

~~**C.** Under the authority provided at A.R.S. §32-1773(B), the Board establishes and shall collect a fee of $500 for registration or biennial registration renewal as a nonresident dispenser of contact lenses.~~

~~**D.**~~ **C.** Except as provided in subsection ~~(D)~~(C)(3), a person requesting a public record shall pay the following for searches and copies of Board records under A.R.S. §§39-121.01 or 39-121.03:

1. Noncommercial copy:
   a. 5¢ per name and address for directory listings or 15¢ each if printed on labels, and
   b. 25¢ per page for other records;

2. Commercial copy:
   a. 25¢ per name and address for directory listings or 35¢ each if printed on labels, and
   b. 50¢ per page for other records; and

3. The Board waives the charges listed in subsections ~~(D)~~(C)(1) and ~~(D)~~(C)(2) for a government agency.

~~**E.**~~ **D.** The Board establishes and shall collect the following charges for the services specified:

1. Written or certified license verification: $10; and

2. Duplicate or replacement renewal receipt: $10.

**R4-21-103 Time-frames for Board Action**

**A.** For each type of license, certificate, or approval issued by the Board, the overall ~~time-frame~~ time frame described in A.R.S. § 41-1072(2) is listed in Table 1.

**B.** For each type of license, certificate, or approval issued by the Board, the administrative completeness review ~~time-frame~~ time frame described in A.R.S. §41-1072(1) is listed in Table 1 and begins on the date the Board receives an application package.

1. If an application package is not administratively complete, the Board shall send a deficiency notice to the applicant that specifies each piece of information or document needed to complete the application package. Within the time provided in Table 1 for response to a deficiency notice, beginning on the postmark date of the deficiency notice, the applicant shall submit to the Board the missing information or document specified in the deficiency notice. The ~~time-frame~~ time frame for the Board to finish the administrative completeness review is suspended from the date the Board mails the deficiency notice to the applicant until the date the Board receives the missing information or document.

2. If an application package is administratively complete, the Board shall send a written notice of administrative completeness to the applicant.

3. If an application package is not completed with the time provided to respond to the deficiency notice, the Board shall send a written notice to the applicant informing the applicant that the Board considers the application withdrawn.

**C.** For each type of license, certificate, or approval issued by the Board, the substantive review time-frame described in A.R.S. § 41-1072(3) is listed in Table 1 and begins on the date the Board sends written notice of administrative completeness to the applicant.

1. During the substantive review ~~time-frame~~ time frame, the Board may make one comprehensive written request for additional information. Within the time provided in Table 1 for response to a comprehensive written request for additional information, beginning on the postmark date of the comprehensive written request for additional information, the applicant shall submit to the Board the requested additional information. The ~~time-frame~~ time frame for the Board to finish the substantive review is suspended from the date the Board mails the comprehensive written request for additional information to the applicant until the Board receives the additional information.

2. If, under A.R.S. §32-1722(C), the Board determines that a hearing is needed to obtain information on the character of an applicant, the Board shall include a notice of the hearing in its comprehensive written request for additional information.

3. If the applicant fails to provide the additional information within the time provided to respond to a comprehensive written request for additional information, the Board shall send a written notice to the applicant informing the applicant that the Board considers the application withdrawn.

**D.** An applicant may, pursuant to A.R.S. §41-1075(B), receive ~~a 40-day~~ an extension of up to twenty-five percent of the overall time frame ~~the time~~ to respond under subsection (B)(3) or (C)(3) by sending a ~~notice of~~ request for extension of time to the Board before expiration of the time to respond. The ~~time-frame~~ time frame for the Board to act remains suspended during any extension of time. If the applicant fails to provide the requested information during the extension of time, the Board shall send a written notice to the applicant informing the applicant that the Board considers the application withdrawn.

**E.** Within the overall ~~time-frame~~ time frame listed in the Table 1, the Board shall:

1. Deny a license, certificate, or approval to an applicant if the Board determines that the applicant does not meet all of the substantive criteria required by statute and this Chapter; or

2. Grant a license, certificate, or approval to an applicant if the Board determines that the applicant meets all of the substantive criteria required by statute and this Chapter.

**F.** If the Board denies a license, certificate, or approval under subsection (E)(1), the Board shall provide a written notice of denial to the applicant that explains:

1. The reason for the denial, with citations to supporting statutes or rules;

2. The applicant's right to seek a fair hearing to appeal the denial;

3. The time for appealing the denial; and

4. The right to request an informal settlement conference.

**G.** In computing any period prescribed in this Section, the day of the act, event, or default after which the designated period begins to run is not included. The period begins on the date of personal service, date shown as received on a certified mail receipt, or postmark date. The last day of the period is included unless it falls on a Saturday, Sunday, or state holiday in which case, the period ends on the next business day.

**Table 1. Time-frames (in calendar days)**

| Type of License | Overall Time-frame | Administrative Review Time-frame | Time to Respond to Deficiency Notice | Substantive Review Time-frame | Time to Respond to Request for Additional Information |
|---|---|---|---|---|---|
| Licensure by examination<br>A.R.S. §32-1722; R4-21-201 | 75 | 15 | 60 | 60 | 20 |
| Licensure by endorsement<br>A.R.S. §32-1723; R4-21-202 | 75 | 15 | 75 | 60 | 20 |
| Renewal of license<br>A.R.S. §32-1726; R4-21-205 | 45 | 15 | 20 | 30 | 20 |
| Renewal of Pharmaceutical agents number A.R.S. §32-1728;<br>R4-21-208 | 75 | 15 | 60 | 60 | 20 |
| Approval of a Continuing Education<br>A.R.S. §32-1704(D); R4-21-210 | 75 | 15 | 20 | 60 | 20 |

| | | | | | |
|---|---|---|---|---|---|
| ~~Registration of nonresident dispenser of replacement soft contact lenses A.R.S. §32-1773; R4-21-213~~ | ~~75~~ | ~~15~~ | ~~20~~ | ~~60~~ | ~~20~~ |

## ARTICLE 2. LICENSING PROVISIONS

### R4-21-201 Licensure by Examination

**A.** An individual is eligible to apply for licensure by examination if the individual graduated from an accredited optometry program but is not eligible for licensure by endorsement under R4-21-202(A).

**B.** To apply for licensure by examination, an individual who is eligible under subsection (A) shall submit an application form, which is available from the Board, and provide the following information about the applicant:

1. Full legal name;

2. Other names ever used, if any, and if applicable, a copy of the court document or marriage license resulting in a name change;

3. Social Security number;

4. Mailing address;

5. E-mail address, if any;

6. Residential, business, and mobile telephone numbers, if applicable;

7. Date and place of birth;

8. Residential addresses for the past five years;

9. Educational background including the name and address of, dates of attendance at, and date of graduation from:

   a. An accredited optometry program,
   b. A pre-optometric school or undergraduate educational institution, and
   ~~c. High school, and~~
   ~~d.~~c. Other post-secondary schools attended, if any;

10. Experience in the practice of the profession of optometry including the business form and location of the practice;

11. Work experience or occupation, other than the practice of the profession of optometry, for the past five years;

12. List of the states in which the applicant is professionally licensed including the name of the state, type of professional license, date issued, and expiration date;

13. List of the states in which the applicant was but no longer is professionally licensed including the name of the state, type of professional license, date issued, and reason the license is no longer valid;

14. Statement of whether the applicant:

    a. Has ever been denied the right to take an examination for optometric licensure by any state or jurisdiction and if so, the name of the state or jurisdiction, date, and reason for the denial;

    b. Has ever been denied an optometric license or renewal in any state or jurisdiction and if so, the name of the state or jurisdiction, date, and reason for the denial;

    c. Has ever had a license or certificate of registration to practice the profession of optometry suspended or revoked by any optometric licensing agency and if so, the name of the optometric licensing agency, date, reason for the suspension or revocation, and current status;

    d. Has ever had an investigation conducted or has an investigation pending by an optometric regulatory agency of any state or jurisdiction and if so, name of the optometric regulatory agency and state or jurisdiction, date, reason for the investigation, and current status;

    e. Has ever had a disciplinary action instituted against the applicant by any optometric licensing agency and if so, the name of the optometric licensing agency, date, nature of the disciplinary action, reason for the disciplinary action, and current status;

    f. Has ever been convicted of, pled guilty or no contest to, or entered into diversion in lieu of prosecution for any criminal offense in any jurisdiction of the United States or foreign country and if so, name of the jurisdiction, date, offense charged, offense for which convicted, pled guilty, or no contest, and current status;

    g. ~~Has been~~ Is currently, or has ever been addicted to narcotic substances or habitually abused alcohol within the last 10 years. ~~and if~~ If so, dates during which the addiction or abuse occurred, ~~date,~~ steps taken to address the addiction or abuse, ~~and~~ current status, ~~;~~ and a statement as to why the addiction or abuse does not amount to unprofessional conduct.

    ~~h. Is presently addicted to narcotic substances or habitually abuses alcohol and if so, why the addiction or abuse does not amount to unprofessional conduct; and~~

15. Dated and sworn signature of the applicant verifying that the information provided is true to the best of the applicant's knowledge, information, and belief.

**C.** In addition to submitting the application form required under subsection (B), an applicant shall submit or have submitted on the applicant's behalf:

1. A ~~two inch by three inch~~ passport-quality photograph of the applicant's head and shoulders that is taken within six months of the date of application and signed by the applicant in ink across the lower portion of the front side;

2. A full set of readable fingerprints taken by a criminal justice agency for the purpose of obtaining a state and federal criminal records check;

3. To process the fingerprints; a ~~A~~ cashier's check or money order payable to the Arizona Department of Public Safety in the amount listed on the application for licensure; ~~required to obtain a state and federal criminal records check;~~

4. The application fee required under A.R.S. §32-1727;

5. A copy of the scores obtained by the applicant on Parts I, II, and III of the National Board of Examiners in Optometry examination less than ten years before the date of the application;

6. A passing score obtained by the applicant on the jurisprudence examination described at R4-21-203;

7. An official transcript submitted directly to the Board by the educational institution with an accredited optometry program from which the applicant graduated with a degree in optometry;

8. An official transcript submitted directly to the Board by the educational institution at which the applicant took pre-optometry or undergraduate courses;

9. A self-query from the National Practitioner Data Bank-Healthcare Integrity and Protection Data Bank made within three months before the date of application; and

10. A copy of the front and back of ~~the~~ a current CPR ~~cardiopulmonary resuscitation~~ card issued to the applicant. ~~or other written documentation of current certification in cardiopulmonary resuscitation.~~

**R4-21-202 Licensure by Endorsement**

**A.** An individual is eligible to apply for licensure by endorsement if the individual:

1. Graduated from an accredited optometry program;

2. Is licensed to practice the profession of optometry in another state that has licensing requirements that the Board determines meet or exceed Arizona's requirements;

3. Has engaged in the practice of the profession of optometry continuously in the other state or military for at least four of the five years before the date of application; and

4. Has not had a license to practice the profession of optometry suspended or revoked by any licensing jurisdiction for a cause that is a ground for suspension or revocation of a license in Arizona.

**B.** To apply for licensure by endorsement, an individual who is eligible under subsection (A) shall submit the application form described in R4-21-201(B).

**C.** In addition to complying with subsection (B), an applicant for licensure by endorsement shall submit or have submitted on the applicant's behalf:

1. The materials required under R4-21-201(C)(1) through (C)(4) and (C)(6) through (C)(10);

2. A state board certification and license verification form, which is submitted directly to the Board from the state that issued the license on which the applicant's endorsement application is based, indicating:

   a. Name and title of the individual completing the verification form;

b. ~~Number of the applicant's~~ Applicant's optometry license number in the state;

c. Date on which the applicant was issued an optometry license by the state;

d. A statement of whether the applicant:
   i. Has been licensed in the state for at least four of the last five years;
   ii. Is certified to use topical diagnostic, topical therapeutic, or oral pharmaceutical agents and if so, the date on which the certification was obtained;
   iii. Is currently in good standing in the state;
   iv. Is known to be licensed to practice the profession of optometry in another state and if so, the name of the other state;
   v. Has been subject to any disciplinary action and if so, the date, nature of, and reason for the disciplinary action; and
   vi. Is subject to any pending investigation or complaint and if so, the nature of the investigation or complaint; and

e. The dated, notarized signature of the individual completing the verification form; and

3. A letter on official letterhead, in substantially the form provided by the Board, from a representative of the accredited optometry program at the educational institution from which the applicant graduated, providing details that demonstrate the applicant's education meets the standards at R4-21-207~~.~~; and

4. If the applicant does not meet the requirements listed in R4-21-201 or R4-21-202(A)(2), a current certificate issued by the CELMO or its successor organization.

**R4-21-203 Jurisprudence Examination**

**A.** To be licensed, an applicant shall obtain a score of at least 75% on a jurisprudence examination that assesses knowledge of Arizona's statutes and rules relating to the practice of optometry in Arizona.

**B.** An applicant may take the jurisprudence examination ~~at any time~~ up to six months prior to submitting an application for licensure or after submitting to the Board the application form required under R4-21-201(B) or R4-21-202(B).

**C.** The jurisprudence exam may be taken in person at the Arizona State Board of Optometry offices, through the National Board of Examiners in Optometry, or at a proctored testing center approved by the Board.

~~**C.**~~ **D.** An applicant who fails the jurisprudence examination may retake the examination one time within ~~six months from the date of the original examination~~. the deficiency time frame of the related application for licensure listed in Table 1.

~~**D.**~~ **E.** The Board shall further consider an applicant who fails the jurisprudence examination a second time only if the applicant:

1. Waits at least six months from the date of the second taking of the jurisprudence examination;

2. Submits a new application form under R4-21-201(B) or R4-21-202(B);

3. Submits a full set of readable fingerprints taken by a criminal justice agency for the purpose of obtaining a state and federal criminal records check; and a cashier's check or money order payable to the Arizona

Department of Public Safety in the amount listed on the application for licensure; ~~payable to the Arizona Department of Public Safety~~; ~~in the amount required~~ ~~to obtain a state and federal criminal records check;~~

4. Submits a ~~two inch by three inch~~ passport-quality photograph of the applicant's head and shoulders that is taken within six months of the date of the new application and signed by the applicant in ink across the lower portion of the front side;

5. Submits a self-query from the National Practitioner Data Bank-Healthcare Integrity and Protection Data Bank made within three months before the date of the new application; and

6. Submits the application fee required under A.R.S. §32-1727.

**R4-21-205 License Renewal**

**A.** To continue practicing the profession of optometry in Arizona, a licensee shall renew the licensee's license and certificate of special qualification, if applicable, on or before the date on which the license and certificate expire. Timely renewal is a licensee's responsibility. As a courtesy, the Board may provide a licensee with notice that the licensee's license is going to expire. Failure to obtain notice of the need to renew is not good cause for failing to renew.

**B.** To renew a license and, if applicable, certificate of special qualification, a licensee shall submit to the Board a license renewal application and provide the following information:

1. Whether the licensee wants to renew the licensee's license and, if applicable, certificate of special qualification;

2. The licensee's current public mailing address, ~~and~~ telephone and fax numbers;

3. The licensee's current residential address, e-mail address, and residential ~~and~~ or mobile telephone numbers;

4. The licensee's current permanent and temporary practice addresses and telephone and fax numbers;

5. A statement of whether the licensee:

   a. Has practiced the profession of optometry within the last two years;

   b. Has been denied the right to take an examination for optometric licensure by any state or jurisdiction within the preceding two years and if so, the name of the state or jurisdiction, date, and reason for the denial;

   c. Has been denied an optometric license or renewal in any state or jurisdiction within the preceding two years and if so, the name of the state or jurisdiction, date, and reason for denial;

   d. Has had a license or certificate of registration to practice the profession of optometry suspended or revoked by any optometric regulatory agency within the preceding two years and if so, the name of the optometric regulatory agency, date, action taken, reason for the action, and current status;

   e. Has had disciplinary action instituted against the licensee by any optometric regulatory agency within the preceding two years and if so, the name of the optometric regulatory agency, date, nature of the disciplinary action, reason for the disciplinary action, and current status;

f. Has had an investigation conducted within the preceding two years or has an investigation pending by an optometric regulatory agency of any state or jurisdiction and if so, name of the optometric regulatory agency and the state or jurisdiction, date, reason for the investigation, and current status;

g. Has been convicted of, pled guilty or no contest to, or entered into diversion in lieu of prosecution for any criminal offense in any jurisdiction of the United States or foreign country within the preceding two years, and if so, the name of the jurisdiction, date, offense charged, offense for which convicted, pled guilty, or no contest, and current status;

h. ~~Has been~~ Is currently, or has been addicted to narcotic substances or habitually abused alcohol within the preceding two years. ~~and if~~ If so, dates during which the addiction or abuse occurred, ~~date,~~ steps taken to address the addiction or abuse, ~~and~~ current status~~;~~ , and a statement as to why the addiction or abuse does not amount to unprofessional conduct.

~~i. Is presently addicted to narcotic substances or habitually abuses alcohol and if so, why the addiction or abuse does not amount to unprofessional conduct;~~

~~j.~~ i Has had the authority to prescribe, dispense, or administer pharmaceutical agents limited, restricted, modified, denied, surrendered, or revoked by a federal or state agency within the preceding two years and if so, name of agency taking action, nature of action taken, date, reason for action, and current status; and

~~k.~~ j. Is in compliance with the provisions of A.R.S. §32-3211;

6. The following information about each approved Continuing Education course attended by the licensee during the preceding two years:

   a. Name of Continuing Education provider,

   b. Title,

   c. COPE course identification number, if any

   ~~c.~~ d. Date(s) of attendance, and

   ~~d.~~ e. Number of hours of attendance; and

7. The licensee's dated signature affirming that the information provided is true and correct.

**C.** In addition to the license renewal application required under subsection (B), a licensee shall submit to the Board:

1. The license renewal fee listed at R4-21-102(B); and

2. The certificate of special qualification fee required under A.R.S. §32-1727 if the licensee has a certificate of special qualification; or

3. Written documentation that the licensee is currently certified in ~~cardiopulmonary resuscitation~~ CPR if the licensee has a pharmaceutical ~~agents~~ agent number.

**D.** A licensee who fails to renew the licensee's license and, if applicable, certificate of special qualification within 30 days after the date of expiration, may apply for late renewal by complying with subsections (B) and (C) within four months after the date of expiration and paying the late renewal fee listed at R4-21-102(B).

**E.** A licensee who fails to renew timely and fails to comply with subsection (D) shall not engage in the practice of the profession of optometry. The holder of a license that is not renewed within four months after the date of expiration may apply under R4-21-206 for license reinstatement but is not eligible for license renewal.

**F.** If a licensee timely applies for license renewal or complies with subsection (D), the licensee's license and, if applicable, certificate of special qualification remain in effect until the license renewal is granted or denied.

**R4-21-205.1 Cardiopulmonary Resuscitation ("CPR") Requirements**

1. A CPR course shall be as recommended by the American Heart Association, the American Red Cross, or the National Safety Council and shall include an exam of the materials presented in the course;

2. A CPR certification card or other documentation with an expiration date received from the CPR course provider shall be presented to the Board as proof of CPR certification.

3. Failure to maintain current CPR certification shall result in immediate loss of the licensee's Pharmaceutical Agent certification. The Pharmaceutical Agent certification shall not be reinstated until written documentation that the CPR certification deficiency has been met and proof of completion is presented to the Board; and

4. Any licensee whose Pharmaceutical Agent certification is suspended due to expiration of their CPR certification shall not prescribe utilizing the Pharmaceutical Agent certification. Upon submission of proof of current CPR certification to the Board, the Pharmaceutical Agent certification shall be immediately reinstated.

**R4-21-206 License Reinstatement; Application for Licensure following License Expiration**

A. Reinstatement following license expiration. Under A.R.S. §32-1726, if ~~If~~ an individual holds a license that has been expired at least four months but less than five years, the individual may apply to the Board to have the license and, if applicable, certificate of special qualification reinstated. To have an expired license reinstated, the former licensee shall:

1. Submit the renewal form described in R4-21-205(B);

2. Submit the renewal fee listed in R4-21-102(B) for each biennial period that the license was not renewed;
3. Submit, if applicable, the fee for a certificate of special qualification listed at A.R.S. §32-1727 for each biennial period that the license was not renewed;

4. Submit the late renewal fee listed in R4-21-102(B) for each biennial period that the license was not renewed;

5. Submit a $50 penalty fee for each year or portion of a year that the license was not renewed; and

6. Submit written documentation that the former licensee is currently certified in cardiopulmonary resuscitation if the former licensee had a pharmaceutical ~~agents~~ agent number.

B. Reinstatement following license suspension. If an individual holds a license that was suspended by the Board following a disciplinary proceeding and if the individual timely renewed the suspended license under R4-21-205, the individual may apply to the Board to have the license and, if applicable, certificate of special qualification reinstated. To have a suspended license reinstated, the suspended licensee shall submit evidence of completing all terms of suspension imposed by the Board.

C. Application for new license following license expiration. If an individual holds a license that has been expired for five years or more, the individual may apply for a new license:

1. Under R4-21-202 if the individual has continuously practiced the profession of optometry in another state or the military for at least four of the last five years, or

2. Under R4-21-201 if the individual is not qualified to apply for a new license under subsection (C)(1).

**R4-21-208 Certificate of Special Qualification; Pharmaceutical Agent Number**

**A.** The Board shall issue a certificate of special qualification that allows a licensee to prescribe, administer, and dispense topical diagnostic and therapeutic pharmaceutical agents or only topical diagnostic pharmaceutical agents if the licensee:

1. Was licensed by the Board before July 1, 2000;

2. Held a comparable certificate of special qualification issued by the Board before July 1, 2000; and

3. Pays the fee prescribed at A.R.S. §32-1727.

**B.** The Board shall issue a certificate of special qualification that indicates a licensee shall not prescribe, administer, or dispense a pharmaceutical agent if the licensee:

1. Was licensed by the Board before July 1, 2000,

2. Did not hold a certificate of special qualification issued by the Board before July 1, 2000, and

3. Pays the fee prescribed at A.R.S. § 32-1727.

**C.** A licensee who holds a certificate of special qualification issued under subsection (A) or (B) may apply to the Board for a pharmaceutical agent number that indicates the licensee is authorized to prescribe, administer, or dispense topical diagnostic, topical therapeutic, and oral pharmaceutical agents. To apply for a pharmaceutical agent number, a licensee who holds a certificate of special qualification issued under subsection (A) or (B) shall:

1. Submit to the Board an application, using a form that is available from the Board, and provide the following information:

a. Name of licensee;

b. Social Security number;

c. Mailing address;

d. Telephone and fax numbers at the address listed under subsection (C)(1)(c);

e. License number;

f. Number of certificate of special qualification for diagnostic pharmaceutical agents, if any;

g. Number of certificate of special qualification for therapeutic pharmaceutical agents, if any;

h. Residential address;

i. Telephone number ~~and fax numbers~~ at the address listed under subsection (C)(1)(h);

j. Name of the course of study approved under R4-21-207 that the licensee completed and date of completion; and

k. Applicant's dated signature affirming that the information provided is true and correct; and

2. Have a representative of the educational institution at which the licensee completed the approved course of study submit to the Board evidence that the course of study is approved and the licensee completed all course requirements; and

3. Submit written documentation that the licensee is currently certified in ~~cardiopulmonary resuscitation~~ CPR.

**D.** The Board shall issue a pharmaceutical agent number that indicates a licensee is authorized to prescribe, administer, or dispense topical diagnostic, topical therapeutic, and oral pharmaceutical agents if the licensee is initially licensed by the Board under R4-21-201 or R4-21-202 after June 30, 2000.

**R4-21-209 Continuing Education Requirement**

**A.** A licensee shall complete 32 hours of approved Continuing Education during each biennial license renewal period. The licensee shall ensure that in each biennial license renewal period:

1. At least ~~four~~ eight hours of the approved Continuing Education is in the area of diagnosis, treatment, and management of disease of the human eye and its adnexa and pharmaceutical use appropriate to the authority held by the licensee;

2. No more than 12 hours of the approved Continuing Education ~~are~~ shall be obtained through self-instructed media~~;~~. All self-instructed media shall be COPE approved.

3. No more than four hours of the approved Continuing Education are in the area of practice management;

4. No more than one hour of approved Continuing Education is claimed for each day of instruction in a course of study approved under R4-21-207 to a maximum of four hours; and

5. No more than four hours of approved Continuing Education are claimed for publishing or presenting a paper, report, or book that deals with current developments, skills, procedures, or treatments related to the practice of the profession of optometry.

6. No more than one (1) hour of Continuing Education requirements shall be claimed for obtaining CPR certification.

**B.** If a licensee obtains more than 32 hours of approved Continuing Education during a biennial renewal period, the licensee shall not claim the extra hours of approved Continuing Education during a subsequent biennial renewal period.

**C.** During the biennial renewal period in which a licensee is first licensed, the licensee shall obtain a prorated number of hours of approved Continuing Education for each month remaining in the biennial renewal period. The hours shall be calculated at four hours per quarter of a year to include the quarter in which the application for licensure is approved by the Board.

**D.** A licensee shall not claim as approved Continuing Education any educational program or course completed before being licensed in Arizona.

**E.** A licensee shall obtain a certificate or other evidence of attendance from the provider of each approved Continuing Education attended that includes the following:

1. Name of the licensee,

2. License number of the licensee,

3. Name of the approved Continuing Education,

4. Name of the Continuing Education provider,

5. Date, time, and location of the approved Continuing Education, and

6. Number of hours of approved Continuing Education and number of hours relating to practice management.

**F.** For the purpose of license renewal, Continuing Education shall be verified through the ARBO OE Tracker Program, using the licensee's individual OE Tracker report.

**~~F.~~G.** A licensee shall maintain the ~~certificates~~ OE Tracker report or other evidence of attendance described in subsection (E) for ~~three years~~ at least two years from the date of attendance.

**~~G.~~H.** A licensee shall submit to the Board a copy of the OE Tracker report ~~the certificates or other evidence of attendance~~ obtained during a biennial renewal period as proof of attendance at Continuing Education courses if subject to an audit by the Board under R4-21-211.

**R4-21-210 Approval of Continuing Education**

**A.** The Board approves the following as Continuing Education:

1. An internship, residency, or fellowship attended at an educational institution with an accredited optometry program; and

2. An educational program designed to provide understanding of current developments, procedures, or treatments, or improve skills related to the practice of the profession of optometry and:

   a. Provided by an educational institution with an accredited optometry program; or

   b. Sponsored or approved by the Association of Schools and Colleges of Optometry, The Council on Optometric Practitioner Education, or a local, regional, or national optometric association.

**B.** To obtain approval of a Continuing Education that is not approved under subsection (A), the provider of the Continuing Education or a licensee shall, before providing or participating in the Continuing Education:

1. Submit an application for approval, using a form that is available from the Board, and provide the following information:

    a. Name of applicant,

    b. Address and telephone number of applicant,

    c. Provider of the Continuing Education,

    d. Name and telephone number of a contact person with the Continuing Education provider,

    e. Name of the Continuing Education,

    f. Date and location of the Continuing Education,

    g. Manner in which potential participants will be notified that the Continuing Education is available,

    h. Number of hours of the Continuing Education and the number of hours that relate to practice management,

    i. Name of instructor of the Continuing Education, and

    j. Dated signature of the applicant;
2. Submit a curriculum vitae for the instructor of the Continuing Education; and

3. Submit a syllabus of the Continuing Education that identifies learning objectives, teaching methods, and content.

**C.** The provider of an approved Continuing Education shall provide each participant with a certificate or other evidence of attendance that meets the standards at R4-21-209(E).

**D.** The Board shall approve a Continuing Education if the application required under subsection (B) is submitted and the Board determines that the Continuing Education is designed to provide understanding of current developments, procedures, or treatments, or improve skills related to the practice of the profession of optometry.

**R4-21-211 Audit of Compliance with Continuing Education Requirement**

**A.** At the time of license renewal, the Board shall provide notice of an audit of Continuing Education records to a random sample of licensees. A licensee subject to a Continuing Education audit shall submit documentation that demonstrates compliance with the Continuing Education requirement at the same time the licensee submits the license renewal application form required under R4-21-205.

**B.** To perform an audit, the Board shall use the information entered into the ARBO OE Tracker software to perform its audit. The Board shall consider a licensee's Continuing Education requirement met if the licensee has recorded the required number of Continuing Education credits into the OE tracker.

**C.** At the time of license renewal, each licensee shall certify to the Board, through an OE Tracker report, completion of the Continuing Education required for license renewal. In the event that Continuing Education credits are not able to be recorded in the OE Tracker, a licensee may submit to the Board certificates of attendance for those hours only to meet the Continuing Education requirement. A licensee may not renew the license until required Continuing Education hours are submitted.

**~~R4-21-213 Registration of Nonresident Contact lens Dispenser; Renewal~~ Repeal**

~~**A.** To register with the Board as a nonresident dispenser of replacement soft contact lenses, a person shall maintain a valid license to conduct the business of a pharmacist or pharmacy in the state in which the person is domiciled.~~

~~**B.** To register with the Board, a nonresident contact lens dispenser that is qualified under subsection (A) shall submit to the Board:~~

~~1. An application, using a form that is available from the Board, that provides the following information:~~

~~a. Name of applicant;~~

~~b. Social Security number;~~

~~c. Date of applicant's birth;~~

~~d. Mailing address;~~

~~e. Telephone and fax numbers at the address listed under subsection (B)(1)(d);~~

~~f. State in which the applicant is licensed as a pharmacist or pharmacy;~~

~~g. Number of pharmacist or pharmacy license;~~

~~h. Whether license held is for a pharmacist or pharmacy;~~

~~i. Taxpayer identification number;~~

~~j. Primary business name;~~

~~k. Address of business location at which inventory and records are stored;~~

~~l. Telephone and fax numbers at the address listed under subsection (B)(1)(k);~~

~~m. Toll-free telephone number for use by Arizona customers; and~~

~~n. Applicant's dated signature affirming that the information provided is true and correct;~~

~~2. The names of all corporate officers and of all general partners, if any;~~

~~3. The fee listed at R4-21-102(C); and~~

~~4. A certified copy of the license referenced in subsection (B)(1)(g).~~

~~**C.** Registration as a nonresident contact lens dispenser is valid for two years from the date issued. To renew registration, a registered nonresident contact lens dispenser shall comply with subsection (B) before the registration expires.~~

## ARTICLE 3. STANDARDS; RECORDKEEPING; REHEARING OR REVIEW OF BOARD DECISION

### R4-21-302 Advertising

**A.** A licensee shall not knowingly make, publish, or use an advertisement that contains a false, fraudulent, deceptive, or misleading representation.

**B.** A licensee may advertise that the licensee has a practice limited in some way if the licensee does not use the term “specialist” or any derivative of the term "specialist."

**C.** A licensee shall ensure that the content of an advertisement or directory that includes the name and address of the licensee is accurate.

**D.** An advertisement for health care services that includes a licensee’s name shall identify the title and type of license the licensee holds.

### R4-21-305 Recordkeeping

**A.** A licensee shall create and maintain a complete and legible record of each examination including all findings. A licensee shall ensure that a patient record is maintained for at least six years after the licensee's last contact with the patient and includes:

1. Patient's name and contact information;
2. Date on which an entry is made in the patient's record;
3. Identification of the person making the entry in the patient's record;
4. Complete health history;
5. Visual acuity of each eye: entering and best corrected;
6. Ocular health examination;
7. Assessment of intraocular and extra-ocular muscle function;
8. Objective or subjective refraction of the eyes;
9. Diagnosis, treatment, and disposition;
10. Type and dosage of each use of a pharmaceutical agent;
11. Final optometric prescription given, if any;
12. Corrective procedure program prescribed, if any; and

13. Signature of licensee providing diagnosis, treatment, and disposition.

**B.** A licensee may create and maintain any record required under A.R.S. Title 32, Chapter 16 or this Chapter in electronic format. A licensee may convert any record maintained under A.R.S. Title 32, Chapter 16 or this Chapter to electronic format. A licensee who converts a record to electronic format shall ensure that the record contains all the information required under A.R.S. Title 32, Chapter 16 and this Chapter.

**C.** A licensee who discontinues practice for any reason shall arrange for a patient's record to be available to the patient for six years from the date the licensee discontinues practice. Before discontinuing practice, a licensee shall notify the Board of the location at which patient records from the practice will be maintained.

**D.** A licensee who acquires the patient records of a licensee who discontinued practice, either with or without succeeding to the practice of the other licensee, shall ensure that the records are available to the patients for six years after the licensee from whom the records were acquired discontinued practice.

**E.** A licensee shall provide a tangible or electronic copy of a patient's record within five business days after receiving a written request from the patient. The licensee shall provide the copy to any person designated by the patient. The licensee may charge a fee to cover the costs of providing the copy. The licensee shall maintain a record of providing the copy for six years.

**F.** Regardless of the form in which a licensee creates and maintains patient records, the licensee shall comply with all ~~law~~ laws regarding security, confidentiality, maintenance and release of the records.

**R4-21-306 Optometric Prescription Standards; Release to Patients**

**A.** When a licensee completes an eye examination and generates an optometric prescription, the licensee shall provide the patient with a copy of the optometric prescription without charging a fee other than the examination fee.

**B.** A licensee shall ensure that an optometric prescription written by the licensee includes:

1. For ophthalmic lenses other than contact lenses:

   a. Name of the patient;

   b. Refractive power of the lenses;

   ~~c. Interpupillary distance;~~

   ~~d.~~ c. Printed name, office address, telephone number, and signature of the licensee; and

   ~~e.~~ d. Date of the examination and expiration date of the prescription;

2. For contact lenses, including plano lenses:

   a. Name of the patient;

   b. For a patient who has not completed a trial period appropriate under the circumstances and desires to have a prescription, the information required for the patient to purchase trial lenses at another optical establishment or location;

c. For a patient who has completed a trial period appropriate under the circumstances for the lenses prescribed, all information necessary to reproduce the contact lenses accurately;

d. Printed name, office address, telephone number, license number, and signature of the licensee;

e. Date of the examination and the issue and expiration date of the prescription; and

f. Information regarding the prescribed contact lenses:
   i. Refractive power;
   ii. Base curve or other appropriate designation;
   iii. Diameter, if appropriate;
   iv. Tint, if applicable;
   v. Material, manufacturer, or both; and
   vi. In the case of private-label contact lenses, manufacturer, trade name, and, if applicable, trade name of equivalent brand name; and

3. For pharmaceutical agents:

a. Name and address of the patient;

b. Date the prescription is issued;

c. Name, strength, and quantity of the pharmaceutical agent prescribed;

d. Directions for use of the pharmaceutical agent prescribed;

e. Name, office address, and telephone number of the prescribing licensee;

f. <u>When prescribing controlled substances, the</u> DEA number of the prescribing licensee;

g. Two adjacent signature lines with the following printed words:
   i. "Dispense as written" under the left signature line, and
   ii. "Substitution permissible" under the right signature line; and

h. Original signature of the prescribing licensee on one of the signature lines; and

4. Additional information that the licensee considers necessary.

**C.** A licensee who dispenses or directs the dispensing of ophthalmic materials shall ensure that a prescription is filled accurately.

**D.** A licensee shall be available to verify that a prescription written by the licensee but filled by another provider of ophthalmic goods is accurately filled. The licensee may charge a fee for verifying the accuracy or quality of ophthalmic goods dispensed by another provider.

<u>**E.** A licensee shall not:</u>

<u>(a) Require purchase of contact lenses from the prescriber or from another person as a condition of providing a copy of the prescription;</u>

(b) Require a payment in addition to, or as part of, the fee for an eye examination, fitting, and evaluation as a condition of providing a copy of a prescription or verification of a prescription;

(c) Require the patient to sign a waiver or release as a condition of verifying or releasing a prescription.

**R4-21-308 Anaphylactic-related Supplies**

**A.** If a patient to whom a licensee administers a pharmaceutical agent experiences an anaphylactic reaction, the licensee may, as provided by A.R.S. § 32-1706~~(E)~~(F), use ~~an~~ injectable epinephrine ~~auto-injector~~ to counteract the anaphylactic reaction.

**B.** A licensee who maintains injectable epinephrine ~~auto-injectors~~ at the licensee's practice location shall also maintain the following medically necessary supportive equipment and supplies:

1. Diphenhydramine in injectable, capsule or tablet, and syrup forms;

2. Syringes for injecting diphenhydramine;

3. Wristwatch with a second hand;

4. Sphygmomanometer with both adult and extra-large cuffs;

5. Stethoscope;

6. Adult-size pocket mask with one-way valve;

7. Tongue depressors; and

8. Telephone.

**ARIZONA STATE BOARD OF OPTOMETRY**
**ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT**

TITLE 32. PROFESSIONS AND OCCUPATIONS
CHAPTER 21. OPTOMETRY

1. **An identification of the proposed rulemaking.**

The proposed rules address changes resulting from Laws 2013, Chapter 186 and Laws 2014, Chapter 262. In addition this rulemaking will update language and terminology used in the rules to improve consistency and clarity as well as conform to statutes amended in the 2013 legislative session (50th Legislature, 1st Regular Session) and 2014 legislative session (51st Legislature, 2nd Regular Session). Anticipated changes include:

a. Repealing sections of rules no longer applicable or functional or pursuant to a change in statute no longer requiring a rule.
b. Adding new definitions for further clarification
c. Minimal increase in license renewal fees; removal of contact lens registration fee due to amendment of statute.
d. Amending extension of time frame for response to deficiency notice or additional information request to conform to statute.
e. Require use of an online education tracking "(OE Tracker") system for proof of attendance at a continuing education ("CE") course and to provide for 100% audit of continuing education for license renewal.
f. Adding new section regarding Cardiopulmonary Resuscitation ("CPR") requirements
g. Amending section on Jurisprudence exam to allow for exam to be taken at the National Board of Examiners in Optometry ("NBEO") testing centers when taking any part of the NBEO or, for other applicants not taking the NBEO, at a proctored testing center.
h. Amend section to allow one hour of CE to be claimed for obtaining CPR certification; clarification of prorated CE hours upon application approval.
i. Repeal section R4-21-213 regarding Registration of Contact Lens dispensers; statute was amended in 2013 to remove this requirement.
j. Remove requirement for interpupillary distance measurement on prescriptions.
k. Additional and clarifying language regarding release of prescriptions.
l. Minor technical and conforming corrections as needed.

2. **An identification of the persons who will be directly affected by, bear the costs of or directly benefit from the proposed rulemaking.**

**Persons affected:**

The rulemaking impacts applicants, licensed optometrists, patients of licensed optometrists, continuing medical education providers, and the Board. Most of the rulemaking clarifies the current rules and thus, amends existing requirements already established in rule.

**Cost Bearer:**

The costs of these rule changes will be borne by the Arizona State Board of Optometry. A licensee may bear additional costs in the form of regular fees with the exception of those not renewing their license.

**Beneficiaries:**

Consumers, patients, licensees and the Board.

**3. A cost benefit analysis of the following:**

**(a) The probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rulemaking. The probable costs to the implementing agency shall include the number of new full-time employees necessary to implement and enforce the proposed rule. The preparer of the economic, small business and consumer impact statement shall notify the joint legislative budget committee of the number of new full-time employees necessary to implement and enforce the rule before the rule is approved by the council.**

The overall economic impact of the rulemaking is expected to be minimal with the benefits outweighing the costs. No new FTEs are required to implement the proposed rules changes.

**(b) The probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the proposed rulemaking.**

None apparent.

**(c) The probable costs and benefits to businesses directly affected by the proposed rulemaking, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed rulemaking.**

None apparent.

**4. A general description of the probable impact on private and public employment in businesses, agencies and political subdivisions of this state directly affected by the proposed rulemaking.**

These changes are not expected to have any impact on private or public business/employment.

5. **A statement of the probable impact of the proposed rulemaking on small businesses. The statement shall include:**

**(a) An identification of the small businesses subject to the proposed rulemaking.**

None apparent.

**(b) The administrative and other costs required for compliance with the proposed rulemaking.**

The Arizona State Board of Optometry is the only state agency affected by this rule making. The small fee increase will affect only the revenue and does not cost the Board to implement. The rule making is not expected to create cost to the Agency or the State and will further streamline the renewal application process as well as improve public protection.

**(c) A description of the methods that the agency may use to reduce the impact on small businesses. These methods may include:**

**(i) Establishing less costly compliance requirements in the proposed rulemaking for small businesses.**

**(ii) Establishing less costly schedules or less stringent deadlines for compliance in the proposed rulemaking.**

**(iii) Exempting small businesses from any or all requirements of the proposed rulemaking.**

**For items (c)(i)(ii.)(iii):**

The Arizona State Board of Optometry is a health regulatory board charged with overseeing the licensure of practitioners and to protecting public health. While some optometrists may practice in a small business setting, the proposed rule amendments impact the optometrists directly rather than the small business practice. Therefore, modifications or exemptions to mitigate the impact of the rules on small business is not applicable.

**(d) The probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking.**

Nominal cost to licensees; none to the public/consumers; 100% benefit of continued protection of the public through efficient and effective rules regarding practice and education of practitioners.

6. **A statement of the probable effect on state revenues.**

The Board of Optometry is a 90/10 agency which means that 90% of revenues are retained by the Board and 10% of the revenue is given to the State and deposited into the General Fund. Therefore, the fee increase does not have detrimental effect on the General Fund but rather, the general fund will realize a $5.00 increase per renewal fee paid.

7. **A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking, including the monetizing of the costs and benefits for each option and providing the rationale for not using nonselected alternatives.**

There is no identified alternative or less costly alternative of which the Agency is aware.

# TITLE 4. PROFESSIONS AND OCCUPATIONS

## CHAPTER 21. BOARD OF OPTOMETRY

(Authority: A.R.S. § 32-1701 et seq.)

***Editor's Note: All former rules renumbered. Refer to Historical Notes following each rule (Supp. 86-1).***

### ARTICLE 1. GENERAL PROVISIONS

Section
R4-21-101. Definitions
R4-21-102. Fees and Other Charges
R4-21-103. Time-frames for Board Action
Table 1. Time-frames (in calendar days)

### ARTICLE 2. LICENSING PROVISIONS

Section
R4-21-201. Licensure by Examination
R4-21-202. Licensure by Endorsement
R4-21-203. Jurisprudence Examination
R4-21-204. License Issuance
R4-21-205. License Renewal
R4-21-206. License Reinstatement; Application for Licensure following License Expiration
R4-21-207. Course of Study Approval
R4-21-208. Certificate of Special Qualification; Pharmaceutical Agent Number
R4-21-209. Continuing Education Requirement
R4-21-210. Approval of Continuing Education
R4-21-211. Audit of Compliance with Continuing Education Requirement
R4-21-212. Waiver of or Extension of Time to Complete Continuing Education Requirement
R4-21-213. Registration of Nonresident Contact-lens Dispenser; Renewal
Table 1. Renumbered

### ARTICLE 3. STANDARDS; RECORDKEEPING; REHEARING OR REVIEW OF BOARD DECISION

Section
R4-21-301. Display of License; Surrender of License
R4-21-302. Advertising
R4-21-303. Affirmative Disclosures Required
R4-21-304. Vision Examination Standards
R4-21-305. Recordkeeping
R4-21-306. Optometric Prescription Standards; Release to Patients
R4-21-307. Vision Rehabilitation
R4-21-308. Anaphylactic-related Supplies
R4-21-309. Rehearing or Review of Board Decision

### ARTICLE 4. REPEALED

*Article 4, consisting of Sections R4-21-401 thru R4-21-406, repealed by final rulemaking at 11 A.A.R. 1864, effective May 3, 2005 (Supp. 05-2).*

*Article 4, consisting of Sections R4-21-401 thru R4-21-406, adopted effective November 5, 1998 (Supp. 98-4).*

Section
R4-21-401. Repealed
R4-21-402. Repealed
R4-21-403. Repealed
R4-21-404. Repealed
R4-21-405. Repealed
R4-21-406. Repealed

### ARTICLE 5. REPEALED

*Article 5, consisting of Sections R4-21-501 thru R4-21-504, repealed by final rulemaking at 14 A.A.R. 12, effective February 2, 2008 (Supp. 07-4).*

*Article 5, consisting of Sections R4-21-501 thru R4-21-504, made by final rulemaking at 11 A.A.R. 1864, effective May 3, 2005. (Supp. 05-2).*

Section
R4-21-501. Repealed
R4-21-502. Repealed
R4-21-503. Repealed
R4-21-504. Repealed

### ARTICLE 1. GENERAL PROVISIONS

**R4-21-101. Definitions**

In addition to the definitions in A.R.S. §§ 32-1701 and 32-1771, the following apply to this Chapter:

"Accredited" means approved by the ACOE.

"ACOE" means the Accreditation Council on Optometric Education.

"Advertisement" means a written, oral, or electronic communication that an ordinary person would perceive is designed to influence, directly or indirectly, a decision regarding ophthalmic goods or optometric services.

"Applicant" means:

An individual who applies to the Board under A.R.S. § 32-1722 or 32-1723 for a license to practice the profession of optometry but has not been granted the license;

A licensee who applies under R4-21-205 for license renewal;

A licensee who applies under R4-21-208 for a pharmaceutical agents number;

A licensee or provider of continuing education that applies for approval of a continuing education under R4-21-210; or

A person who applies to the Board under A.R.S. § 32-1774 and R4-21-213 for registration as a non-resident dispenser of replacement soft contact lenses.

"Application package" means the forms, documents, and fees that the Board requires an applicant to submit or have submitted on the applicant's behalf.

"Approved continuing education" means a planned educational experience relevant to the practice of the profession of optometry that the Board determines meets the criteria at R4-21-210.

"Certificate of special qualification" means a document that specifies whether the holder, who was licensed by the Board before July 1, 2000, and has not completed a course of study approved by the Board, may prescribe, administer, and dispense a pharmaceutical agent and if so, whether the holder may prescribe, administer, and dispense:

A topical diagnostic pharmaceutical agent only, or

Topical diagnostic and topical therapeutic pharmaceutical agents.

"Course of study," as used in A.R.S. § 32-1722, means education approved by the Board under R4-21-207 that qualifies an optometrist to prescribe, administer, and dis-

pense topical diagnostic, topical therapeutic, and oral pharmaceutical agents.
"Epinephrine auto-injector" means an intramuscular dose of epinephrine used for emergency treatment of an allergic reaction and delivered by a spring-loaded syringe.
"Good cause" means a reason that is substantial enough to afford a legal excuse.
"Incompetence," as used in A.R.S. § 32-1701(8), means lack of professional skill, fidelity, or physical or mental fitness, or substandard examination or treatment while practicing the profession of optometry.
"Low vision" means chronic impairment to vision that significantly interferes with daily routine activities and cannot be adequately corrected with medical, surgical, or therapeutic means or conventional eyewear or contact lenses.
"Low-vision rehabilitation" means use of optical and non-optical devices, adaptive techniques, and community resources to assist an individual to compensate for low vision in performing daily routine activities.
"Negligence," as used in A.R.S. § 32-1701(8), means conduct that falls below the standard of care for the protection of patients and the public against unreasonable risk of harm and that is a departure from the conduct expected of a reasonably prudent licensee under the circumstances.
"Oral pharmaceutical agent," as used in A.R.S. § 32-1728, means an ingested prescription or non-prescription substance used to examine, diagnose, or treat disease of the eye and its adnexa.
"Party" has the same meaning as prescribed in A.R.S. § 41-1001.
"Plano lenses" means contact lenses that have cosmetic function only.
"Practice management" means the study of management of the affairs of optometric practice.
"Self-instructed media" means educational material in a printed, audio, video, or electronic format.
"Topical diagnostic pharmaceutical agent," as used in A.R.S. § 32-1728, means an externally applied prescription or non-prescription substance used to examine and diagnose disease and conditions of the eye and its adnexa.
"Topical therapeutic pharmaceutical agent," as used in A.R.S. § 32-1728, means an externally applied prescription or non-prescription substance used to treat disease of the eye and its adnexa.
"Vision rehabilitation" means an individualized course of treatment and education prescribed to improve conditions of the human eye or adnexa or develop compensatory approaches. Vision rehabilitation is designed to help individuals learn, relearn, or reinforce specific vision skills, including eye movement control, focusing control, eye coordination, and the teamwork of the two eyes. Vision rehabilitation includes, but is not limited to optical, non-optical, electronic, or other assistive treatments.

**Historical Note**

Former Rule Section 1. Former Section R4-21-01 repealed, new Section R4-21-101 adopted effective February 7, 1986 (Supp. 86-1). Amended effective April 1, 1991 (Supp. 91-2). Amended effective November 5, 1998 (Supp. 98-4). Amended by final rulemaking at 6 A.A.R. 3812, effective September 13, 2000 (Supp. 00-3). Amended by final rulemaking at 11 A.A.R. 1864, effective May 3, 2005 (Supp. 05-2). Amended by final rulemaking at 14 A.A.R. 12, effective February 2, 2008 (Supp. 07-4).

**R4-21-102. Fees and Other Charges**

**A.** The Board shall collect the fees established by A.R.S. § 32-1727.

**B.** Under the authority provided at A.R.S. § 32-1727, the Board establishes and shall collect the following fees:
1. License issuance fee of $400, which is prorated from date of issuance to date of renewal;
2. Biennial license renewal fee of $400; and
3. Late renewal fee of $200.

**C.** Under the authority provided at A.R.S. § 32-1773(B), the Board establishes and shall collect a fee of $500 for registration or biennial registration renewal as a nonresident dispenser of contact lenses.

**D.** Except as provided in subsection (D)(3), a person requesting a public record shall pay the following for searches and copies of Board records under A.R.S. § 39-121.01 or 39-121.03:
1. Noncommercial copy:
   a. 5¢ per name and address for directory listings or 15¢ each if printed on labels, and
   b. 25¢ per page for other records;
2. Commercial copy:
   a. 25¢ per name and address for directory listings or 35¢ each if printed on labels, and
   b. 50¢ per page for other records; and
3. The Board waives the charges listed in subsections (D)(1) and (D)(2) for a government agency.

**E.** The Board establishes and shall collect the following charges for the services specified:
1. Written or certified license verification: $10; and
2. Duplicate or replacement renewal receipt: $10.

**Historical Note**

Former Rule Section 2. Former Section R4-21-02 repealed, new Section R4-21-102 adopted effective February 7, 1986 (Supp. 86-1). Amended effective November 5, 1998 (Supp. 98-4). Section repealed by final rulemaking at 11 A.A.R. 1864, effective May 3, 2005 (Supp. 05-2). Section R4-21-102 renumbered from R4-21-103 and amended by final rulemaking at 14 A.A.R. 12, effective February 2, 2008 (Supp. 07-4).

**R4-21-103. Time-frames for Board Action**

**A.** For each type of license, certificate, or approval issued by the Board, the overall time-frame described in A.R.S. § 41-1072(2) is listed in Table 1.

**B.** For each type of license, certificate, or approval issued by the Board, the administrative completeness review time-frame described in A.R.S. § 41-1072(1) is listed in Table 1 and begins on the date the Board receives an application package.
1. If an application package is not administratively complete, the Board shall send a deficiency notice to the applicant that specifies each piece of information or document needed to complete the application package. Within the time provided in Table 1 for response to a deficiency notice, beginning on the postmark date of the deficiency notice, the applicant shall submit to the Board the missing information or document specified in the deficiency notice. The time-frame for the Board to finish the administrative completeness review is suspended from the date the Board mails the deficiency notice to the applicant until the date the Board receives the missing information or document.
2. If an application package is administratively complete, the Board shall send a written notice of administrative completeness to the applicant.
3. If an application package is not completed with the time provided to respond to the deficiency notice, the Board

shall send a written notice to the applicant informing the applicant that the Board considers the application withdrawn.

**C.** For each type of license, certificate, or approval issued by the Board, the substantive review time-frame described in A.R.S. § 41-1072(3) is listed in Table 1 and begins on the date the Board sends written notice of administrative completeness to the applicant.

1. During the substantive review time-frame, the Board may make one comprehensive written request for additional information. Within the time provided in Table 1 for response to a comprehensive written request for additional information, beginning on the postmark date of the comprehensive written request for additional information, the applicant shall submit to the Board the requested additional information. The time-frame for the Board to finish the substantive review is suspended from the date the Board mails the comprehensive written request for additional information to the applicant until the Board receives the additional information.
2. If, under A.R.S. § 32-1722(C), the Board determines that a hearing is needed to obtain information on the character of an applicant, the Board shall include a notice of the hearing in its comprehensive written request for additional information.
3. If the applicant fails to provide the additional information within the time provided to respond to a comprehensive written request for additional information, the Board shall send a written notice to the applicant informing the applicant that the Board considers the application withdrawn.

**D.** An applicant may receive a 40-day extension of the time to respond under subsection (B)(3) or (C)(3) by sending a notice of extension of time to the Board before expiration of the time to respond. The time-frame for the Board to act remains suspended during any extension of time. If the applicant fails to provide the requested information during the extension of time, the Board shall send a written notice to the applicant informing the applicant that the Board considers the application withdrawn.

**E.** Within the overall time-frame listed in Table 1, the Board shall:

1. Deny a license, certificate, or approval to an applicant if the Board determines that the applicant does not meet all of the substantive criteria required by statute and this Chapter; or
2. Grant a license, certificate, or approval to an applicant if the Board determines that the applicant meets all of the substantive criteria required by statute and this Chapter.

**F.** If the Board denies a license, certificate, or approval under subsection (E)(1), the Board shall provide a written notice of denial to the applicant that explains:

1. The reason for the denial, with citations to supporting statutes or rules;
2. The applicant's right to seek a fair hearing to appeal the denial;
3. The time for appealing the denial; and
4. The right to request an informal settlement conference.

**G.** In computing any period prescribed in this Section, the day of the act, event, or default after which the designated period begins to run is not included. The period begins on the date of personal service, date shown as received on a certified mail receipt, or postmark date. The last day of the period is included unless it falls on a Saturday, Sunday, or state holiday in which case, the period ends on the next business day.

**Historical Note**

Former Section 3. Amended effective December 27, 1979 (Supp. 79-6). Former Section R4-21-03 renumbered without change as Section R4-21-211, former Section R4-21-06 renumbered without change as Section R4-21-103 effective February 7, 1986 (Supp. 86-1). Amended subsection (A) effective June 20, 1989 (Supp. 89-2). Amended effective September 14, 1998 (Supp. 98-3). Amended effective November 5, 1998 (Supp. 98-4). Amended by final rulemaking at 11 A.A.R. 1864, effective May 3, 2005 (Supp. 05-2). Former R4-21-103 renumbered to R4-21-102; new R4-21-103 renumbered from R4-21-203 and amended by final rulemaking at 14 A.A.R. 12, effective February 2, 2008 (Supp. 07-4).

**Table 1. Time-frames (in calendar days)**

| Type of License | Overall Time-frame | Administrative Review Time-frame | Time to Respond to Deficiency Notice | Substantive Review Time-frame | Time to Respond to Request for Additional Information |
|---|---|---|---|---|---|
| Licensure by examination A.R.S. § 32-1722; R4-21-201 | 75 | 15 | 60 | 60 | 20 |
| Licensure by endorsement A.R.S. § 32-1723; R4-21-202 | 75 | 15 | 75 | 60 | 20 |
| Renewal of license A.R.S. § 32-1726; R4-21-205 | 45 | 15 | 20 | 30 | 20 |
| Pharmaceutical agents number A.R.S. § 32-1728; R4-21-208 | 75 | 15 | 60 | 60 | 20 |
| Approval of a continuing education A.R.S. § 32-1704(D); R4-21-210 | 75 | 15 | 20 | 60 | 20 |
| Registration of nonresident dispenser of replacement soft contact lenses A.R.S. § 32-1773; R4-21-213 | 75 | 15 | 20 | 60 | 20 |

**Historical Note**

Table 1 renumbered from Article 2 and amended by final rulemaking at 14 A.A.R. 12, effective February 2, 2008 (Supp. 07-4).

## ARTICLE 2. LICENSING PROVISIONS

### R4-21-201. Licensure by Examination

**A.** An individual is eligible to apply for licensure by examination if the individual graduated from an accredited optometry program but is not eligible for licensure by endorsement under R4-21-202(A).

**B.** To apply for licensure by examination, an individual who is eligible under subsection (A) shall submit an application form, which is available from the Board, and provide the following information about the applicant:

1. Full legal name;
2. Other names ever used, if any, and if applicable, a copy of the court document or marriage license resulting in a name change;
3. Social Security number;
4. Mailing address;
5. E-mail address, if any;
6. Residential, business, and mobile telephone numbers;
7. Date and place of birth;
8. Residential addresses for the past five years;
9. Educational background including the name and address of, dates of attendance at, and date of graduation from:
   a. An accredited optometry program,
   b. A pre-optometric school or undergraduate educational institution,
   c. High school, and
   d. Other post-secondary schools attended;
10. Experience in the practice of the profession of optometry including the business form and location of the practice;
11. Work experience or occupation, other than the practice of the profession of optometry, for the past five years;
12. List of the states in which the applicant is professionally licensed including the name of the state, type of professional license, date issued, and expiration date;
13. List of the states in which the applicant was but no longer is professionally licensed including the name of the state, type of professional license, date issued, and reason the license is no longer valid;
14. Statement of whether the applicant:
    a. Has ever been denied the right to take an examination for optometric licensure by any state or jurisdiction and if so, the name of the state or jurisdiction, date, and reason for the denial;
    b. Has ever been denied an optometric license or renewal in any state or jurisdiction and if so, the name of the state or jurisdiction, date, and reason for the denial;
    c. Has ever had a license or certificate of registration to practice the profession of optometry suspended or revoked by any optometric licensing agency and if so, the name of the optometric licensing agency, date, reason for the suspension or revocation, and current status;
    d. Has ever had an investigation conducted or has an investigation pending by an optometric regulatory agency of any state or jurisdiction and if so, name of the optometric regulatory agency and state or jurisdiction, date, reason for the investigation, and current status;
    e. Has ever had a disciplinary action instituted against the applicant by any optometric licensing agency and if so, the name of the optometric licensing agency, date, nature of the disciplinary action, reason for the disciplinary action, and current status;
    f. Has ever been convicted of, pled guilty or no contest to, or entered into diversion in lieu of prosecution for any criminal offense in any jurisdiction of the United States or foreign country and if so, name of the jurisdiction, date, offense charged, offense for which convicted, pled guilty, or no contest, and current status;
    g. Has been addicted to narcotic substances or habitually abused alcohol within the last 10 years and if so,

date, steps taken to address the addiction or abuse, and current status; and

h. Is presently addicted to narcotic substances or habitually abuses alcohol and if so, why the addiction or abuse does not amount to unprofessional conduct; and

15. Dated and sworn signature of the applicant verifying that the information provided is true to the best of the applicant's knowledge, information, and belief.

**C.** In addition to submitting the application form required under subsection (B), an applicant shall submit or have submitted on the applicant's behalf:

1. A 2 inch by 3 inch passport-quality photograph of the applicant's head and shoulders that is taken within six months of the date of application and signed by the applicant in ink across the lower portion of the front side;
2. A full set of readable fingerprints taken by a criminal justice agency;
3. A cashier's check or money order payable to the Arizona Department of Public Safety in the amount required to obtain a state and federal criminal records check;
4. The application fee required under A.R.S. § 32-1727;
5. A copy of the scores obtained by the applicant on Parts I, II, and III of the National Board of Examiners in Optometry examination taken less than 10 years before the date of the application;
6. A passing score obtained by the applicant on the jurisprudence examination described at R4-21-203;
7. An official transcript submitted directly to the Board by the educational institution with an accredited optometry program from which the applicant graduated with a degree in optometry;
8. An official transcript submitted directly to the Board by the educational institution at which the applicant took pre-optometry or undergraduate courses;
9. A self-query from the National Practitioner Data Bank-Healthcare Integrity and Protection Data Bank made within three months before the date of application; and
10. A copy of the front and back of the cardiopulmonary resuscitation card issued to the applicant or other written documentation of current certification in cardiopulmonary resuscitation.

**Historical Note**

Adopted effective February 7, 1986 (Supp. 86-1). Amended effective April 1, 1991 (Supp. 91-2). Amended effective November 5, 1998 (Supp. 98-4). Amended by final rulemaking at 6 A.A.R. 3812, effective September 13, 2000 (Supp. 00-3). Amended by final rulemaking at 11 A.A.R. 1864, effective May 3, 2005 (Supp. 05-2). Amended by final rulemaking at 14 A.A.R. 12, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 16 A.A.R. 2383, effective November 16, 2010 (Supp. 10-4).

**R4-21-202. Licensure by Endorsement**

**A.** An individual is eligible to apply for licensure by endorsement if the individual:

1. Graduated from an accredited optometry program,
2. Is licensed to practice the profession of optometry in another state that has licensing requirements that the Board determines meet or exceed Arizona's requirements,
3. Has engaged in the practice of the profession of optometry continuously in the other state or military for at least four of the five years before the date of application, and
4. Has not had a license to practice the profession of optometry suspended or revoked by any licensing jurisdiction for a cause that is a ground for suspension or revocation of a license in Arizona.

**B.** To apply for licensure by endorsement, an individual who is eligible under subsection (A) shall submit the application form described in R4-21-201(B).

**C.** In addition to complying with subsection (B), an applicant for licensure by endorsement shall submit or have submitted on the applicant's behalf:

1. The materials required under R4-21-201(C)(1) through (C)(4) and (C)(6) through (C)(10);
2. A state board certification and license verification form, which is submitted directly to the Board from the state that issued the license on which the applicant's endorsement application is based, indicating:
   a. Name and title of the individual completing the verification form;
   b. Number of the applicant's optometry license in the state;
   c. Date on which the applicant was issued an optometry license by the state;
   d. A statement of whether the applicant:
      i. Has been licensed in the state for at least four of the last five years;
      ii. Is certified to use topical diagnostic, topical therapeutic, or oral pharmaceutical agents and if so, the date on which the certification was obtained;
      iii. Is currently in good standing in the state;
      iv. Is known to be licensed to practice the profession of optometry in another state and if so, the name of the other state;
      v. Has been subject to any disciplinary action and if so, the date, nature of, and reason for the disciplinary action; and
      vi. Is subject to any pending investigation or complaint and if so, the nature of the investigation or complaint; and
   e. The dated, notarized signature of the individual completing the verification form; and
3. A letter on official letterhead, in substantially the form provided by the Board, from a representative of the accredited optometry program at the educational institution from which the applicant graduated, providing details that demonstrate the applicant's education meets the standards at R4-21-207.

**Historical Note**

Adopted effective February 7, 1986 (Supp. 86-1). Amended effective April 1, 1991 (Supp. 91-2). Section R4-21-202 repealed; new Section R4-21-202 renumbered from R4-21-204 and amended effective November 5, 1998 (Supp. 98-4). Amended by final rulemaking at 11 A.A.R. 1864, effective May 3, 2005 (Supp. 05-2). Former R4-21-202 renumbered to R4-21-203; new R4-21-202 made by final rulemaking at 14 A.A.R. 12, effective February 2, 2008 (Supp. 07-4).

**R4-21-203. Jurisprudence Examination**

**A.** To be licensed, an applicant shall obtain a score of at least 75% on a jurisprudence examination that assesses knowledge of Arizona's statutes and rules relating to optometry.

**B.** An applicant may take the jurisprudence examination at any time after submitting to the Board the application form required under R4-21-201(B) or R4-21-202(B).

**C.** An applicant who fails the jurisprudence examination may retake the examination one time within six months from the date of the original examination.

**D.** The Board shall further consider an applicant who fails the jurisprudence examination a second time only if the applicant:
1. Waits at least six months from the date of the second taking of the jurisprudence examination,
2. Submits a new application form under R4-21-201(B) or R4-21-202(B),
3. Submits a full set of readable fingerprints taken by a criminal justice agency and a cashier's check or money order payable to the Arizona Department of Public Safety in the amount required to obtain a state and federal criminal records check,
4. Submits a 2 inch by 3 inch passport-quality photograph of the applicant's head and shoulders that is taken within six months of the date of the new application and signed by the applicant in ink across the lower portion of the front side,
5. Submits a self-query from the National Practitioner Data Bank-Healthcare Integrity and Protection Data Bank made within three months before the date of the new application, and
6. Submits the application fee required under A.R.S. § 32-1727.

**Historical Note**

Adopted effective February 7, 1986 (Supp. 86-1). Amended effective April 1, 1991 (Supp. 91-2). Section R4-21-203 repealed; new Section R4-21-203 adopted effective November 5, 1998 (Supp. 98-4). Amended by final rulemaking at 6 A.A.R. 3812, effective September 13, 2000 (Supp. 00-3). Amended by final rulemaking at 11 A.A.R. 1864, effective May 3, 2005 (Supp. 05-2). Former R4-21-203 renumbered to R4-21-103; new R4-21-203 renumbered from R4-21-202 and amended by final rulemaking at 14 A.A.R. 12, effective February 2, 2008 (Supp. 07-4).

**R4-21-204. License Issuance**

**A.** When the Board determines that an applicant meets all of the substantive criteria required by statute and this Chapter, the Board shall send the applicant a written notice informing the applicant that the Board shall issue the applicant a license when the applicant pays the license issuance fee required under R4-21-102(B).

**B.** Under A.R.S. § 32-1725, if an applicant fails to pay the license issuance fee within 60 days after receiving notice under subsection (A), the Board considers the application withdrawn. An individual whose application is withdrawn can be further considered for licensing only by complying with R4-21-201 or R4-21-202.

**Historical Note**

Adopted effective February 7, 1986 (Supp. 86-1). Amended effective April 1, 1991 (Supp. 91-2). Section R4-21-204 renumbered to R4-21-202; new Section R4-21-204 adopted effective November 5, 1998 (Supp. 98-4). Amended by final rulemaking at 6 A.A.R. 3812, effective September 13, 2000 (Supp. 00-3). Amended by final rulemaking at 11 A.A.R. 1864, effective May 3, 2005 (Supp. 05-2). Former R4-21-204 renumbered to R4-21-205; new R4-21-204 made by final rulemaking at 14 A.A.R. 12, effective February 2, 2008 (Supp. 07-4).

**R4-21-205. License Renewal**

**A.** To continue practicing the profession of optometry in Arizona, a licensee shall renew the licensee's license and certificate of special qualification, if applicable, on or before the date on which the license and certificate expire. Timely renewal is a licensee's responsibility. As a courtesy, the Board may provide a licensee with notice that the licensee's license is going to expire. Failure to obtain notice of the need to renew is not good cause for failing to renew.

**B.** To renew a license and, if applicable, certificate of special qualification, a licensee shall submit to the Board a license renewal application and provide the following information:
1. Whether the licensee wants to renew the licensee's license and, if applicable, certificate of special qualification;
2. The licensee's current mailing address and telephone and fax numbers;
3. The licensee's current residential address, e-mail address, and residential and mobile telephone numbers;
4. The licensee's current permanent and temporary practice addresses and telephone and fax numbers;
5. A statement of whether the licensee:
   a. Has practiced the profession of optometry within the last two years;
   b. Has been denied the right to take an examination for optometric licensure by any state or jurisdiction within the preceding two years and if so, the name of the state or jurisdiction, date, and reason for the denial;
   c. Has been denied an optometric license or renewal in any state or jurisdiction within the preceding two years and if so, the name of the state or jurisdiction, date, and reason for denial;
   d. Has had a license or certificate of registration to practice the profession of optometry suspended or revoked by any optometric regulatory agency within the preceding two years and if so, the name of the optometric regulatory agency, date, action taken, reason for the action, and current status;
   e. Has had disciplinary action instituted against the licensee by any optometric regulatory agency within the preceding two years and if so, the name of the optometric regulatory agency, date, nature of the disciplinary action, reason for the disciplinary action, and current status;
   f. Has had an investigation conducted within the preceding two years or has an investigation pending by an optometric regulatory agency of any state or jurisdiction and if so, name of the optometric regulatory agency and the state or jurisdiction, date, reason for the investigation, and current status;
   g. Has been convicted of, pled guilty or no contest to, or entered into diversion in lieu of prosecution for any criminal offense in any jurisdiction of the United States or foreign country within the preceding two years, and if so, the name of the jurisdiction, date, offense charged, offense for which convicted, pled guilty, or no contest, and current status;
   h. Has been addicted to narcotic substances or habitually abused alcohol within the preceding two years and if so date, steps taken to address the addiction or abuse, and current status;
   i. Is presently addicted to narcotic substances or habitually abuses alcohol and if so, why the addiction or abuse does not amount to unprofessional conduct;
   j. Has had the authority to prescribe, dispense, or administer pharmaceutical agents limited, restricted, modified, denied, surrendered, or revoked by a federal or state agency within the preceding two years and if so, name of agency taking action, nature of

action taken, date, reason for action, and current status; and
k. Is in compliance with the provisions of A.R.S. § 32-3211;
6. The following information about each approved continuing education attended by the licensee during the preceding two years:
a. Name of continuing education provider,
b. Title,
c. Date of attendance, and
d. Number of hours of attendance, and
7. The licensee's dated signature affirming that the information provided is true and correct.

**C.** In addition to the license renewal application required under subsection (B), a licensee shall submit to the Board:
1. The license renewal fee listed at R4-21-102(B), and
2. The certificate of special qualification fee required under A.R.S. § 32-1727 if the licensee has a certificate of special qualification, or
3. Written documentation that the licensee is currently certified in cardiopulmonary resuscitation if the licensee has a pharmaceutical agents number.

**D.** A licensee who fails to renew the licensee's license and, if applicable, certificate of special qualification within 30 days after the date of expiration, may apply for late renewal by complying with subsections (B) and (C) within four months after the date of expiration and paying the late renewal fee listed at R4-21-102(B).

**E.** A licensee who fails to renew timely and fails to comply with subsection (D) shall not engage in the practice of the profession of optometry. The holder of a license that is not renewed within four months after the date of expiration may apply under R4-21-206 for license reinstatement but is not eligible for license renewal.

**F.** If a licensee timely applies for license renewal or complies with subsection (D), the licensee's license and, if applicable, certificate of special qualification remain in effect until the license renewal is granted or denied.

**Historical Note**

Adopted effective February 7, 1986 (Supp. 86-1). Amended effective April 1, 1991 (Supp. 91-2). Section R4-21-205 renumbered to R4-21-207; new Section R4-21-205 adopted effective November 5, 1998 (Supp. 98-4). Amended by final rulemaking at 6 A.A.R. 3812, effective September 13, 2000 (Supp. 00-3). Amended by final rulemaking at 11 A.A.R. 1864, effective May 3, 2005 (Supp. 05-2). Former R4-21-205 renumbered to R4-21-207; new R4-21-205 renumbered from R4-21-204 and amended by final rulemaking at 14 A.A.R. 12, effective February 2, 2008 (Supp. 07-4).

**R4-21-206. License Reinstatement; Application for Licensure following License Expiration**

**A.** Reinstatement following license expiration. If an individual holds a license that has been expired at least four months but less than five years, the individual may apply to the Board to have the license and, if applicable, certificate of special qualification reinstated. To have an expired license reinstated, the former licensee shall:
1. Submit the renewal form described in R4-21-205(B);
2. Submit the renewal fee listed in R4-21-102(B) for each biennial period that the license was not renewed;
3. Submit, if applicable, the fee for a certificate of special qualification listed at A.R.S. § 32-1727 for each biennial period that the license was not renewed;
4. Submit the late renewal fee listed in R4-21-102(B) for each biennial period that the license was not renewed;
5. Submit a $50 penalty fee for each year or portion of a year that the license was not renewed; and
6. Submit written documentation that the former licensee is currently certified in cardiopulmonary resuscitation if the former licensee had a pharmaceutical agents number.

**B.** Reinstatement following license suspension. If an individual holds a license that was suspended by the Board following a disciplinary proceeding and if the individual timely renewed the suspended license under R4-21-205, the individual may apply to the Board to have the license and, if applicable, certificate of special qualification reinstated. To have a suspended license reinstated, the suspended licensee shall submit evidence of completing all terms of suspension imposed by the Board.

**C.** Application for new license following license expiration. If an individual holds a license that has been expired for five years or more, the individual may apply for a new license:
1. Under R4-21-202 if the individual has continuously practiced the profession of optometry in another state or the military for at least four of the last five years, or
2. Under R4-21-201 if the individual is not qualified to apply for a new license under subsection (C)(1).

**Historical Note**

Adopted effective November 5, 1998 (Supp. 98-4). Amended by final rulemaking at 6 A.A.R. 3812, effective September 13, 2000 (Supp. 00-3). Amended by final rulemaking at 11 A.A.R. 1864, effective May 3, 2005 (Supp. 05-2). Former R4-21-206 renumbered to R4-21-208; new R4-21-206 made by final rulemaking at 14 A.A.R. 12, effective February 2, 2008 (Supp. 07-4).

**R4-21-207. Course of Study Approval**

The Board approves a course of study that:
1. Includes didactic and clinical training in:
a. Examining, diagnosing, and treating conditions of the human eye and its adnexa; and
b. Prescribing dispensing, and administering pharmaceutical agents;
2. Includes at least 120 hours of training, at least 12 of which address prescribing, dispensing, and administering oral pharmaceutical agents; and
3. Is provided by an educational institution with an accredited optometry program.

**Historical Note**

Former Section R4-21-08 renumbered without change as Section R4-21-207 effective February 7, 1986 (Supp. 86-1). Amended effective April 1, 1991 (Supp. 91-2). Section R4-21-207 renumbered to R4-21-208; new Section R4-21-207 renumbered from R4-21-205 and amended effective November 5, 1998 (Supp. 98-4). Amended by final rulemaking at 6 A.A.R. 3812, effective September 13, 2000 (Supp. 00-3). Amended by final rulemaking at 11 A.A.R. 1864, effective May 3, 2005 (Supp. 05-2). Former R4-21-207 renumbered to R4-21-301; new R4-21-207 renumbered from R4-21-205 and amended by final rulemaking at 14 A.A.R. 12, effective February 2, 2008 (Supp. 07-4).

**R4-21-208. Certificate of Special Qualification; Pharmaceutical Agent Number**

**A.** The Board shall issue a certificate of special qualification that allows a licensee to prescribe, administer, and dispense topical diagnostic and therapeutic pharmaceutical agents or only topical diagnostic pharmaceutical agents if the licensee:

1. Was licensed by the Board before July 1, 2000;
2. Held a comparable certificate of special qualification issued by the Board before July 1, 2000; and
3. Pays the fee prescribed at A.R.S. § 32-1727.

**B.** The Board shall issue a certificate of special qualification that indicates a licensee shall not prescribe, administer, or dispense a pharmaceutical agent if the licensee:
1. Was licensed by the Board before July 1, 2000,
2. Did not hold a certificate of special qualification issued by the Board before July 1, 2000, and
3. Pays the fee prescribed at A.R.S. § 32-1727.

**C.** A licensee who holds a certificate of special qualification issued under subsection (A) or (B) may apply to the Board for a pharmaceutical agent number that indicates the licensee is authorized to prescribe, administer, or dispense topical diagnostic, topical therapeutic, and oral pharmaceutical agents. To apply for a pharmaceutical agent number, a licensee who holds a certificate of special qualification issued under subsection (A) or (B) shall:
1. Submit to the Board an application, using a form that is available from the Board, and provide the following information:
   a. Name of licensee;
   b. Social Security number;
   c. Mailing address;
   d. Telephone and fax numbers at the address listed under subsection (C)(1)(c);
   e. License number;
   f. Number of certificate of special qualification for diagnostic pharmaceutical agents, if any;
   g. Number of certificate of special qualification for therapeutic pharmaceutical agents, if any;
   h. Residential address;
   i. Telephone and fax numbers at the address listed under subsection (C)(1)(h);
   j. Name of the course of study approved under R4-21-207 that the licensee completed and date of completion; and
   k. Applicant's dated signature affirming that the information provided is true and correct; and
2. Have a representative of the educational institution at which the licensee completed the approved course of study submit to the Board evidence that the course of study is approved and the licensee completed all course requirements; and
3. Submit written documentation that the licensee is currently certified in cardiopulmonary resuscitation.

**D.** The Board shall issue a pharmaceutical agent number that indicates a licensee is authorized to prescribe, administer, or dispense topical diagnostic, topical therapeutic, and oral pharmaceutical agents if the licensee is initially licensed by the Board under R4-21-201 or R4-21-202 after June 30, 2000.

**Historical Note**

Adopted effective February 7, 1986 (Supp. 86-1). Amended effective April 1, 1991 (Supp. 91-2). Section R4-21-208 renumbered to R4-21-209; new Section R4-21-208 renumbered from R4-21-207 and amended effective November 5, 1998 (Supp. 98-4). Amended by final rulemaking at 6 A.A.R. 3812, effective September 13, 2000 (Supp. 00-3). Amended by final rulemaking at 11 A.A.R. 1864, effective May 3, 2005 (Supp. 05-2). Former R4-21-208 renumbered to R4-21-209; new R4-21-208 renumbered from R4-21-206 and amended by final rulemaking at 14 A.A.R. 12, effective February 2, 2008 (Supp. 07-4).

**R4-21-209. Continuing Education Requirement**

**A.** A licensee shall complete 32 hours of approved continuing education during each biennial license renewal period. The licensee shall ensure that in each biennial license renewal period:
1. At least four hours of the approved continuing education is in the area of diagnosis, treatment, and management of disease of the human eye and its adnexa and pharmaceutical use appropriate to the authority held by the licensee;
2. No more than 12 hours of the approved continuing education are obtained through self-instructed media;
3. No more than four hours of the approved continuing education are in the area of practice management;
4. No more than one hour of approved continuing education is claimed for each day of instruction in a course of study approved under R4-21-207 to a maximum of four hours; and
5. No more than four hours of approved continuing education are claimed for publishing or presenting a paper, report, or book that deals with current developments, skills, procedures, or treatments related to the practice of the profession of optometry.

**B.** If a licensee obtains more than 32 hours of approved continuing education during a biennial renewal period, the licensee shall not claim the extra hours of approved continuing education during a subsequent biennial renewal period.

**C.** During the biennial renewal period in which a licensee is first licensed, the licensee shall obtain a prorated number of hours of approved continuing education for each month remaining in the biennial renewal period.

**D.** A licensee shall not claim as approved continuing education any educational program or course completed before being licensed.

**E.** A licensee shall obtain a certificate or other evidence of attendance from the provider of each approved continuing education attended that includes the following:
1. Name of the licensee;
2. License number of the licensee;
3. Name of the approved continuing education;
4. Name of the continuing education provider;
5. Date, time, and location of the approved continuing education; and
6. Number of hours of approved continuing education and number of hours relating to practice management.

**F.** A licensee shall maintain the certificates or other evidence of attendance described in subsection (E) for three years from the date of attendance.

**G.** A licensee shall submit to the Board a copy of the certificates or other evidence of attendance obtained during a biennial renewal period if subject to an audit by the Board under R4-21-211.

**Historical Note**

Adopted effective February 7, 1986 (Supp. 86-1). Section R4-21-209 renumbered to R4-21-307 effective April 1, 1991 (Supp. 91-2). New Section R4-21-209 renumbered from R4-21-208 and amended effective November 5, 1998 (Supp. 98-4). Amended by final rulemaking at 11 A.A.R. 1864, effective May 3, 2005 (Supp. 05-2). Former R4-21-209 renumbered to R4-21-212; new R4-21-209 renumbered from R4-21-208 and amended by final rulemaking at 14 A.A.R. 12, effective February 2, 2008 (Supp. 07-4).

**R4-21-210. Approval of Continuing Education**

**A.** The Board approves the following as continuing education:

1. An internship, residency, or fellowship attended at an educational institution with an accredited optometry program; and
2. An educational program designed to provide understanding of current developments, procedures, or treatments, or improve skills related to the practice of the profession of optometry; and
   a. Provided by an educational institution with an accredited optometry program; or
   b. Sponsored or approved by the Association of Schools and Colleges of Optometry, Council on Optometric Practitioner Education, or a local, regional, or national optometric association.

**B.** To obtain approval of a continuing education that is not approved under subsection (A), the provider of the continuing education or a licensee shall, before providing or participating in the continuing education:
1. Submit an application for approval, using a form that is available from the Board, and provide the following information:
   a. Name of applicant,
   b. Address and telephone number of applicant,
   c. Provider of the continuing education,
   d. Name and telephone number of a contact person with the continuing education provider,
   e. Name of the continuing education,
   f. Date and location of the continuing education,
   g. Manner in which potential participants will be notified that the continuing education is available,
   h. Number of hours of the continuing education and the number of hours that relate to practice management,
   i. Name of instructor of the continuing education, and
   j. Dated signature of the applicant;
2. Submit a curriculum vitae for the instructor of the continuing education; and
3. Submit a syllabus of the continuing education that identifies learning objectives, teaching methods, and content.

**C.** The provider of an approved continuing education shall provide each participant with a certificate or other evidence of attendance that meets the standards at R4-21-209(E).

**D.** The Board shall approve a continuing education if the application required under subsection (B) is submitted and the Board determines that the continuing education is designed to provide understanding of current developments, procedures, or treatments, or improve skills related to the practice of the profession of optometry.

**Historical Note**

Former Section R4-21-02 renumbered without change as Section R4-21-210 effective February 7, 1986 (Supp. 86-1). Repealed effective April 1, 1991 (Supp. 91-2). New Section adopted by final rulemaking at 6 A.A.R. 3812, effective September 13, 2000 (Supp. 00-3). Repealed by final rulemaking at 11 A.A.R. 1864, effective May 3, 2005 (Supp. 05-2). New Section made by final rulemaking at 14 A.A.R. 12, effective February 2, 2008 (Supp. 07-4).

**R4-21-211. Audit of Compliance with Continuing Education Requirement**

At the time of license renewal, the Board shall provide notice of an audit of continuing education records to a random sample of licensees. A licensee subject to a continuing education audit shall submit documentation that demonstrates compliance with the continuing education requirement at the same time the licensee submits the license renewal application form required under R4-21-205.

**Historical Note**

Former Section R4-21-03 renumbered without change as Section R4-21-211 effective February 7, 1986 (Supp. 86-1). Repealed effective April 1, 1991 (Supp. 91-2). New Section made by final rulemaking at 14 A.A.R. 12, effective February 2, 2008 (Supp. 07-4).

**R4-21-212. Waiver of or Extension of Time to Complete Continuing Education Requirement**

**A.** To obtain a waiver of some or all of the hours of approved continuing education required during a biennial renewal period, a licensee shall submit a written request to the Board that:
1. Specifies the number of hours of approved continuing education that the licensee requests the Board to waive, and
2. Documents that the licensee suffered a serious or disabling illness or other good cause that prevented the licensee from complying with the continuing education requirement.

**B.** The Board shall grant a waiver within seven days after receiving the request if the Board determines that the licensee demonstrated good cause.

**C.** To obtain an extension of time to complete the continuing education requirement, a licensee shall submit to the Board a written request that includes the following:
1. Ending date of the requested extension,
2. Continuing education completed during the biennial renewal period and the documentation required under R4-21-209(E),
3. Proof of registration for additional approved continuing education that is sufficient to enable the licensee to fulfill the continuing education requirement before the end of the requested extension, and
4. Licensee's attestation that the continuing education obtained under the extension will be reported only to fulfill the current renewal requirement and will not be reported on a subsequent license renewal application.

**D.** The Board shall grant an extension of time within seven days after receiving a request for an extension of time if the request:
1. Specifies an ending date no later than four months after the date of license expiration, and
2. Includes the required documentation and attestation.

**Historical Note**

Former Section R4-21-04 renumbered without change as Section R4-21-212 effective February 7, 1986 (Supp. 86-1). Repealed effective April 1, 1991 (Supp. 91-2). New R4-21-212 renumbered from R4-21-209 and amended by final rulemaking at 14 A.A.R. 12, effective February 2, 2008 (Supp. 07-4).

**R4-21-213. Registration of Nonresident Contact-lens Dispenser; Renewal**

**A.** To register with the Board as a nonresident dispenser of replacement soft contact lenses, a person shall maintain a valid license to conduct the business of a pharmacist or pharmacy in the state in which the person is domiciled.

**B.** To register with the Board, a nonresident contact-lens dispenser that is qualified under subsection (A) shall submit to the Board:
1. An application, using a form that is available from the Board, that provides the following information:
   a. Name of applicant,
   b. Social Security number,
   c. Date of applicant's birth,
   d. Mailing address,
   e. Telephone and fax numbers at the address listed under subsection (B)(1)(d),

f. State in which the applicant is licensed as a pharmacist or pharmacy,
g. Number of pharmacist or pharmacy license,
h. Whether license held is for a pharmacist or pharmacy,
i. Taxpayer identification number,
j. Primary business name,
k. Address of business location at which inventory and records are stored,
l. Telephone and fax numbers at the address listed under subsection (B)(1)(k),
m. Toll-free telephone number for use by Arizona customers, and
n. Applicant's dated signature affirming that the information provided is true and correct.

2. The names of all corporate officers and of all general partners, if any;
3. The fee listed at R4-21-102(C); and
4. A certified copy of the license referenced in subsection (B)(1)(g).

**C.** Registration as a nonresident contact-lens dispenser is valid for two years from the date issued. To renew registration, a registered nonresident contact-lens dispenser shall comply with subsection (B) before the registration expires.

**Historical Note**
New Section made by final rulemaking at 14 A.A.R. 12, effective February 2, 2008 (Supp. 07-4).

**Table 1. Renumbered**

**Historical Note**
Table 1 adopted effective November 5, 1998 (Supp. 98-4). Amended by final rulemaking at 6 A.A.R. 3812, effective September 13, 2000 (Supp. 00-3). Amended by final rulemaking at 11 A.A.R. 1864, effective May 3, 2005 (Supp. 05-2). Table 1 renumbered to Article 1 by final rulemaking at 14 A.A.R. 12, effective February 2, 2008 (Supp. 07-4).

## ARTICLE 3. STANDARDS; RECORDKEEPING; REHEARING OR REVIEW OF BOARD DECISION

### R4-21-301. Display of License; Surrender of License

**A.** License display. A licensee shall display the Board-issued license at each location at which the licensee practices the profession of optometry and in a manner that makes the license visible to the public.

**B.** License surrender. Upon order by the Board, a licensee shall surrender to the Board all copies of the license and, if applicable, certificate of special qualification issued to the licensee.

**Historical Note**
Adopted effective April 1, 1991 (Supp. 91-2). Amended effective November 5, 1998 (Supp. 98-4). Amended by final rulemaking at 11 A.A.R. 1864, effective May 3, 2005 (Supp. 05-2). Section repealed; new R4-21-301 renumbered from R4-21-207 and amended by final rulemaking at 14 A.A.R. 12, effective February 2, 2008 (Supp. 07-4).

### R4-21-302. Advertising

**A.** A licensee shall not knowingly make, publish, or use an advertisement that contains a false, fraudulent, deceptive, or misleading representation.

**B.** A licensee may advertise that the licensee has a practice limited in some way if the licensee does not use the term "specialist" or any derivative of the term "specialist."

**C.** A licensee shall ensure that the content of an advertisement or directory that includes the name and address of the licensee is accurate.

**Historical Note**
Adopted effective April 1, 1991 (Supp. 91-2). Amended effective November 5, 1998 (Supp. 98-4). Amended by final rulemaking at 11 A.A.R. 1864, effective May 3, 2005 (Supp. 05-2). Amended by final rulemaking at 14 A.A.R. 12, effective February 2, 2008 (Supp. 07-4).

### R4-21-303. Affirmative Disclosures Required

**A.** A licensee shall ensure that an advertisement for or by the licensee clearly indicates within the advertisement:
1. Whether spectacle lenses or contact lenses advertised are single vision, multi-focal, or other;
2. Whether the price advertised for spectacles includes both the frame and lenses;
3. Whether the price advertised includes an eye examination;
4. Whether the price advertised for contact lenses includes all dispensing fees, follow-up care, and a contact lens accessory kit and if an accessory kit is included, the specific features of the kit;
5. Whether restrictions are imposed upon delivery, if delivery time is advertised;
6. The refund policy if refunds are advertised; and
7. A statement that other restrictions apply if there are other restrictions.

**B.** A licensee shall inform a patient of all professional fees before providing treatment.

**C.** A licensee who refers a patient to a facility in which the licensee or a member of the licensee's family has an ownership or employment interest shall advise the patient of the interest at the time of referral.

**D.** A licensee who charges a patient a fee for a warranty or a service or ophthalmic-goods-replacement agreement, shall:
1. Give the patient a written copy of the warranty or service or ophthalmic-goods-replacement agreement;
2. Ensure that the warranty or service or ophthalmic-goods-replacement agreement explains the coverage included and any limitation;
3. Document compliance with subsection (D)(1) by making a written entry on the patient's record; and
4. Place a copy of the warranty or service or ophthalmic-goods-replacement agreement, signed by the patient, in the patient's record.

**Historical Note**
Adopted effective April 1, 1991 (Supp. 91-2). Amended effective November 5, 1998 (Supp. 98-4). Amended by final rulemaking at 11 A.A.R. 1864, effective May 3, 2005 (Supp. 05-2). Amended by final rulemaking at 14 A.A.R. 12, effective February 2, 2008 (Supp. 07-4).

### R4-21-304. Vision Examination Standards

A licensee shall conduct an eye examination in accordance with the standards of care prevalent in the community and consistent with current industry practice.

**Historical Note**
Adopted effective April 1, 1991 (Supp. 91-2). Amended effective November 5, 1998 (Supp. 98-4). Amended by final rulemaking at 6 A.A.R. 3812, effective September 13, 2000 (Supp. 00-3). Amended by final rulemaking at 11 A.A.R. 1864, effective May 3, 2005 (Supp. 05-2). Former R4-21-304 renumbered to R4-21-305; new R4-21-304 made by final rulemaking at 14 A.A.R. 12, effective February 2, 2008 (Supp. 07-4).

**R4-21-305. Recordkeeping**

**A.** A licensee shall create and maintain a complete and legible record of each examination including all findings. A licensee shall ensure that a patient record is maintained for at least six years after the licensee's last contact with the patient and includes:
1. Patient's name and contact information;
2. Date on which an entry is made in the patient's record;
3. Identification of the person making the entry in the patient's record;
4. Complete health history;
5. Visual acuity of each eye: entering and best corrected;
6. Ocular health examination;
7. Assessment of intraocular and extra-ocular muscle function;
8. Objective or subjective refraction of the eyes;
9. Diagnosis, treatment, and disposition;
10. Type and dosage of each use of a pharmaceutical agent;
11. Final optometric prescription given, if any;
12. Corrective procedure program prescribed, if any; and
13. Signature of licensee providing diagnosis, treatment, and disposition.

**B.** A licensee may create and maintain any record required under A.R.S. Title 32, Chapter 16 or this Chapter in electronic format. A licensee may convert any record maintained under A.R.S. Title 32, Chapter 16 or this Chapter to electronic format. A licensee who converts a record to electronic format shall ensure that the record contains all the information required under A.R.S. Title 32, Chapter 16 and this Chapter.

**C.** A licensee who discontinues practice for any reason shall arrange for a patient's record to be available to the patient for six years from the date the licensee discontinues practice. Before discontinuing practice, a licensee shall notify the Board of the location at which patient records from the practice will be maintained.

**D.** A licensee who acquires the patient records of a licensee who discontinued practice, either with or without succeeding to the practice of the other licensee, shall ensure that the records are available to the patients for six years after the licensee from whom the records were acquired discontinued practice.

**E.** A licensee shall provide a tangible or electronic copy of a patient's record within five business days after receiving a written request from the patient. The licensee shall provide the copy to any person designated by the patient. The licensee may charge a fee to cover the costs of providing the copy. The licensee shall maintain a record of providing the copy for six years.

**F.** Regardless of the form in which a licensee creates and maintains patient records, the licensee shall comply with all law regarding security, confidentiality, and release of the records.

**Historical Note**

Adopted effective April 1, 1991 (Supp. 91-2). Amended effective November 5, 1998 (Supp. 98-4). Amended by final rulemaking at 11 A.A.R. 1864, effective May 3, 2005 (Supp. 05-2). Former R4-21-305 renumbered to R4-21-306; new R4-21-305 renumbered from R4-21-304 and amended by final rulemaking at 14 A.A.R. 12, effective February 2, 2008 (Supp. 07-4).

**R4-21-306. Optometric Prescription Standards; Release to Patients**

**A.** When a licensee completes an eye examination and generates an optometric prescription, the licensee shall provide the patient with a copy of the optometric prescription without charging a fee other than the examination fee.

**B.** A licensee shall ensure that an optometric prescription written by the licensee includes:
1. For ophthalmic lenses other than contact lenses:
   a. Name of the patient;
   b. Refractive power of the lenses;
   c. Interpupillary distance;
   d. Printed name office address, telephone number, and signature of the licensee; and
   e. Date of the examination and expiration date of the prescription;
2. For contact lenses, including plano lenses:
   a. Name of the patient;
   b. For a patient who has not completed a trial period appropriate under the circumstances and desires to have a prescription, the information required for the patient to purchase trial lenses at another optical establishment or location;
   c. For a patient who has completed a trial period appropriate under the circumstances for the lenses prescribed, all information necessary to reproduce the contact lenses accurately;
   d. Printed name, office address, telephone number, license number, and signature of the licensee;
   e. Date of the examination and the issue and expiration date of the prescription; and
   f. Information regarding the prescribed contact lenses:
      i. Refractive power;
      ii. Base curve or other appropriate designation;
      iii. Diameter, if appropriate;
      iv. Tint, if applicable;
      v. Material, manufacturer, or both; and
      vi. In the case of private-label contact lenses, manufacturer, trade name, and, if applicable, trade name of equivalent brand name; and
3. For pharmaceutical agents:
   a. Name and address of the patient;
   b. Date the prescription is issued;
   c. Name, strength, and quantity of the pharmaceutical agent prescribed;
   d. Directions for use of the pharmaceutical agent prescribed;
   e. Name, office address, and telephone number of the prescribing licensee;
   f. DEA number of the prescribing licensee;
   g. Two adjacent signature lines with the following printed words:
      i. "Dispense as written" under the left signature line, and
      ii. "Substitution permissible" under the right signature line; and
   h. Original signature of the prescribing licensee on one of the signature lines; and
4. Additional information that the licensee considers necessary.

**C.** A licensee who dispenses or directs the dispensing of ophthalmic materials shall ensure that a prescription is filled accurately.

**D.** A licensee shall be available to verify that a prescription written by the licensee but filled by another provider of ophthalmic goods is accurately filled. The licensee may charge a fee for verifying the accuracy or quality of ophthalmic goods dispensed by another provider.

**Historical Note**

Adopted effective February 7, 1986 (Supp. 86-1). Amended effective April 1, 1991 (Supp. 91-2). Section R4-21-306 renumbered to R4-21-307; new Section R4-

21-306 adopted effective November 5, 1998 (Supp. 98-4). Amended by final rulemaking at 11 A.A.R. 1864, effective May 3, 2005 (Supp. 05-2). Former R4-21-306 renumbered to R4-21-307; new R4-21-306 renumbered from R4-21-305 and amended by final rulemaking at 14 A.A.R. 12, effective February 2, 2008 (Supp. 07-4).

**R4-21-307. Vision Rehabilitation**

**A.** A licensee may use any objective or subjective method other than surgery to diagnose or treat any visual, muscular, neurological, or anatomical anomaly of the eye.

**B.** A licensee may use any instrument or device to train the visual system or correct any abnormal condition of the eye.

**Historical Note**

Adopted effective February 7, 1986 (Supp. 86-1). Section R4-21-307 renumbered from R4-21-209 effective April 1, 1991 (Supp. 91-2). Section R4-21-307 renumbered to R4-21-308; new Section R4-21-307 renumbered from R4-21-306 and amended effective November 5, 1998 (Supp. 98-4). Repealed by final rulemaking at 11 A.A.R. 1864, effective May 3, 2005 (Supp. 05-2). New R4-21-307 renumbered from R4-21-306 and amended by final rulemaking at 14 A.A.R. 12, effective February 2, 2008 (Supp. 07-4).

**R4-21-308. Anaphylactic-related Supplies**

**A.** If a patient to whom a licensee administers a pharmaceutical agent experiences an anaphylactic reaction, the licensee may, as provided by A.R.S. § 32-1706(E), use an epinephrine auto-injector to counteract the anaphylactic reaction.

**B.** A licensee who maintains epinephrine auto-injectors at the licensee's practice location shall also maintain the following medically necessary supportive equipment and supplies:

1. Diphenhydramine in injectable, capsule or tablet, and syrup forms;
2. Syringes for injecting diphenhydramine;
3. Wristwatch with a second hand;
4. Sphygmomanometer with both adult and extra-large cuffs;
5. Stethoscope;
6. Adult-size pocket mask with one-way valve;
7. Tongue depressors; and
8. Telephone.

**Historical Note**

Section R4-21-308 renumbered from R4-21-307 and amended effective November 5, 1998 (Supp. 98-4). Amended by final rulemaking at 11 A.A.R. 1864, effective May 3, 2005 (Supp. 05-2). Former R4-21-308 renumbered to R4-21-309; new R4-21-308 made by final rulemaking at 14 A.A.R. 12, effective February 2, 2008 (Supp. 07-4).

**R4-21-309. Rehearing or Review of Board Decision**

**A.** The Board shall provide for a rehearing and review of its decisions under A.R.S. Title 41, Chapter 6, Article 10 and the rules established by the Office of Administrative Hearings.

**B.** Except as provided in subsection (H), a party is required to file a motion for rehearing or review of a decision of the Board to exhaust the party's administrative remedies.

**C.** A party may amend a motion for rehearing or review at any time before the Board rules on the motion.

**D.** The Board may grant a rehearing or review for any of the following reasons materially affecting a party's rights:

1. Irregularity in the proceedings of the Board or any order or abuse of discretion that deprived the moving party of a fair hearing;
2. Misconduct of the Board, its staff, or the administrative law judge;
3. Accident or surprise that could not have been prevented by ordinary prudence;
4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
5. Excessive or insufficient penalties;
6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or in the course of the proceedings; and
7. The findings of fact or decision is not justified by the evidence or is contrary to law.

**E.** The Board may affirm or modify a decision or grant a rehearing or review to all or some of the parties on all or some of the issues for any of the reasons listed in subsection (D). An order modifying a decision or granting a rehearing or review shall specify with particularity the grounds for the order. If a rehearing or review is granted, the rehearing or review shall cover only the matters specified in the order.

**F.** Not later than 30 days after the date of a decision and after giving the parties notice and an opportunity to be heard, the Board may, on its own initiative, order a rehearing or review of its decision for any reason it might have granted a rehearing or review on motion of a party. The Board may grant a motion for rehearing or review, timely served, for a reason not stated in the motion. An order granting a rehearing or review shall specify with particularity the grounds on which the rehearing or review is granted.

**G.** When a motion for rehearing is based upon affidavits, they shall be served with the motion. An opposing party may, within 15 days after service, serve opposing affidavits. This period may be extended by the Board for a maximum of 20 days for good cause or by written stipulation of the parties. Reply affidavits may be permitted.

**H.** If, in a particular decision, the Board makes a specific finding that the immediate effectiveness of the decision is necessary for preservation of the public peace, health, or safety and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the Board may issue the decision as a final decision without opportunity for a rehearing or review.

**Historical Note**

Section R4-21-309 renumbered from R4-21-308 and amended by final rulemaking at 14 A.A.R. 12, effective February 2, 2008 (Supp. 07-4).

**ARTICLE 4. REPEALED**

**R4-21-401. Repealed**

**Historical Note**

Adopted effective November 5, 1998 (Supp. 98-4). Repealed by final rulemaking at 11 A.A.R. 1864, effective May 3, 2005 (Supp. 05-2).

**R4-21-402. Repealed**

**Historical Note**

Adopted effective November 5, 1998 (Supp. 98-4). Repealed by final rulemaking at 11 A.A.R. 1864, effective May 3, 2005 (Supp. 05-2).

**R4-21-403. Repealed**

**Historical Note**

Adopted effective November 5, 1998 (Supp. 98-4). Repealed by final rulemaking at 11 A.A.R. 1864, effective May 3, 2005 (Supp. 05-2).

**R4-21-404. Repealed**

**Historical Note**
Adopted effective November 5, 1998 (Supp. 98-4). Repealed by final rulemaking at 11 A.A.R. 1864, effective May 3, 2005 (Supp. 05-2).

**R4-21-405. Repealed**

**Historical Note**
Adopted effective November 5, 1998 (Supp. 98-4). Repealed by final rulemaking at 11 A.A.R. 1864, effective May 3, 2005 (Supp. 05-2).

**R4-21-406. Repealed**

**Historical Note**
Adopted effective November 5, 1998 (Supp. 98-4). Repealed by final rulemaking at 11 A.A.R. 1864, effective May 3, 2005 (Supp. 05-2).

**ARTICLE 5. REPEALED**

**R4-21-501. Repealed**

**Historical Note**
New Section made by final rulemaking at 11 A.A.R. 1864, effective May 3, 2005 (Supp. 05-2). Section repealed by final rulemaking at 14 A.A.R. 12, effective February 2, 2008 (Supp. 07-4).

**R4-21-502. Repealed**

**Historical Note**
New Section made by final rulemaking at 11 A.A.R. 1864, effective May 3, 2005 (Supp. 05-2). Section repealed by final rulemaking at 14 A.A.R. 12, effective February 2, 2008 (Supp. 07-4).

**R4-21-503. Repealed**

**Historical Note**
New Section made by final rulemaking at 11 A.A.R. 1864, effective May 3, 2005 (Supp. 05-2). Section repealed by final rulemaking at 14 A.A.R. 12, effective February 2, 2008 (Supp. 07-4).

**R4-21-504. Repealed**

**Historical Note**
New Section made by final rulemaking at 11 A.A.R. 1864, effective May 3, 2005 (Supp. 05-2). Section repealed by final rulemaking at 14 A.A.R. 12, effective February 2, 2008 (Supp. 07-4).

32-1704. Powers and duties of the board

A. The board shall adopt, and may amend, rules consistent with this chapter governing the practice of the profession of optometry, for the performance of its duties under this chapter and for the examination of applicants for licenses. The board shall adopt and use a seal, administer oaths and take testimony concerning any matter within its jurisdiction.

B. The board may not adopt a rule that:

1. Regulates a licensee's fees or charges to a patient.

2. Regulates the place in which a licensee may practice.

3. Prescribes the manner or method of accounting, billing or collection of fees.

4. Prohibits advertising by a licensee unless the advertising is inconsistent with section 44-1481.

C. The board shall maintain its records in accordance with a retention schedule approved by the Arizona state library, archives and public records.

D. The board shall adopt rules for criteria it must use to approve continuing education programs for licensees. Programs shall be designed to assist licensees to maintain competency, to become aware of new developments in the practice of the profession of optometry and to increase management skills and administrative efficiency. The board shall approve programs that meet these criteria.

E. Subject to title 41, chapter 4, article 4, the board may hire an executive director as an employee of the board. The executive director is responsible for the performance of the regular administrative functions of the board and such other administrative duties as the board may direct. The executive director is eligible to receive compensation in an amount as determined pursuant to section 38-611.

F. The board may hire investigators subject to title 41, chapter 4, article 4 or contract with investigators to assist in the investigation of violations of this chapter, hire other employees subject to title 41, chapter 4, article 4 required to carry out this chapter and contract with other state agencies when required to carry out this chapter.

G. The board may:

1. Appoint advisory committees.

2. Issue subpoenas for the attendance of witnesses and the production of books, records, documents and other evidence it deems relevant to an investigation or hearing.

3. Charge reasonable fees for materials it has printed at its own expense.

4. Delegate to the executive director, board staff and persons with whom the board contracts the board's licensing and regulatory duties. The board shall adopt rules for each specific licensing and regulatory duty the board delegates pursuant to this paragraph.

H. Subject to title 41, chapter 4, article 4, the board may hire consultants and professional and clerical personnel as required to perform its duties.

I. The board may contract with other state or federal agencies as required to carry out this chapter.

J. Subject to the limitations of section 41-2544, the executive director may enter into agreements to allow licensees to pay fees by alternative methods, including credit cards, charge cards, debit cards and electronic funds transfers.

K. A person who is aggrieved by an action taken by the executive director, board staff or person with whom the board contracts may request the board to review that action by filing with the board a written request within thirty days after that person is notified of the action by personal delivery or certified mail to that person's last known residence or place of business. At the next regular board meeting, the board shall review the action and approve, modify or reject the action.

L. The board shall report allegations of evidence of criminal wrongdoing to the appropriate criminal justice agency.

32-1727. Fees

A. The following fees shall be paid to the board:

1. Filing an application for examination, one hundred fifty dollars.

2. License issuance fee as established by the board.

3. Renewal of a license to practice the profession of optometry as established by the board.

4. Late renewal of a license as established by the board.

5. Application for a license by endorsement, three hundred dollars.

6. Duplicate license fee, thirty dollars.

7. Certificates of special qualification, twenty dollars.

8. Duplicate certificates of special qualification, twenty dollars.

9. Optometry statute pamphlet fee, five dollars.

B. Fees are not refundable.