

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* first as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council or the Attorney General. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 5. STATE LAND DEPARTMENT

PREAMBLE

- 1. Sections Affected**
R12-5-2303
- Rulemaking Action**
Amend
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. § 37-213(E)
Implementing statutes: A.R.S. §§ 27-234(J), 27-567(F), 37-132(A)(7), 37-214, 37-215, 37-236(C), 37-285(F), 37-312(L), 37-321.01(E), 37-1.01(C), 37-334(E), 37-335, and 37-1127(C)
- 3. The effective date of the rules:**
February 17, 2003
- 4. A list of all previous notices appearing in the Register addressing the final rule:**
Notice of Rulemaking Docket Opening: 8 A.A.R. 1183, March 22, 2002
Notice of Proposed Rulemaking: 8 A.A.R. 2534, June 14, 2002
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Victoria M. Mangiapane, Assistant Attorney General
Address: 1275 W. Washington
Phoenix, AZ 85007
Telephone: (602) 542-8303
Fax: (602) 542-8308
E-mail: victoria.mangiapane@ag.state.az.us
- 6. An explanation of the rule, including the agency's reasons for initiating the rule:**
The rule is being amended as a result of a five-year review report approved by the Governor's Regulatory Review Council in July 2000, to address an inconsistency with the requirements of Arizona's Administrative Procedure Act (APA) regarding the number of days advance notice given to the parties of a hearing before the Board of Appeals. Currently, R12-5-2302 requires 20 days advance notice of the hearing, while the APA requires 30 days notice. The rule is being amended to require 30 days advance notice of hearings before the Board of Appeals to comply with the statutory requirements of the APA and to ensure consistency and fairness in administrative proceedings before the Board of Appeals.
- 7. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rule or proposes 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 rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**
Not applicable

Arizona Administrative Register
Notices of Final Rulemaking

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

The primary economic impact of the rule change is the additional notice time a party to an administrative hearing before the Board of Appeals will receive. The rule change will make the Board's rules consistent with Arizona's Administrative Procedure Act, which will be a benefit to the Board, small businesses, and consumers. The Board does not anticipate any monetary impact to the Board, small businesses, or consumers from the rule change.

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

The Board did not receive any comments regarding the Notice of Proposed Rulemaking. The Board made some grammatical changes to the rules based on a courtesy review received from the Governor's Regulatory Review Council's staff.

11. A summary of the comments made regarding the rule and the agency response to them:

The Board did not receive any comments regarding the proposed rule change.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

13. Incorporation by reference and their location in the rules:

None

14. Was the rule previously made as an emergency rule?

No

15. The full text of the rules follows:

TITLE 12. NATURAL RESOURCES

CHAPTER 5. STATE LAND DEPARTMENT

ARTICLE 23. BOARD OF APPEALS

Section

R12-5-2303. Notice of Hearing

ARTICLE 23. BOARD OF APPEALS

R12-5-2303. Notice of Hearing

- A. Setting a hearing date. Within ~~ten~~ 10 days from the date of receiving the ~~Notice~~ notice of Appeal ~~appeal pursuant to~~ under A.R.S. § 37-215, the Clerk shall set a date for the hearing in compliance with A.R.S. § 37-215.
- B. Service of a notice of hearing. At least ~~twenty~~ 30 days ~~prior to~~ before the date of the hearing, the Clerk shall serve notice of the hearing by certified mail or personal service, to the appellant, the Department, and ~~any~~ all other ~~party~~ parties to the appeal.
- C. Contents of a notice of hearing. The notice shall contain:
 1. A statement identifying the Board, the parties, and the ~~matter to be heard~~ matters asserted;
 2. A statement of the date, time, and place of the hearing;
 3. A statement of the legal authority and jurisdiction under which the hearing is to be held;
 4. A statement advising the parties of the requirements of R12-5-2305; and
 5. A reference to the particular Sections of the statutes and rules involved.

Arizona Administrative Register
Notices of Final Rulemaking

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

None

11. A summary of the principal comments and the agency response to them:

The Commission did not receive written comments to the rules.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

13. Incorporations by reference and their location in the rules:

None

14. Was this rule previously made as an emergency rule?

No

15. The full text of the rule follows:

**TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS;
SECURITIES REGULATION**

**CHAPTER 4. CORPORATION COMMISSION
SECURITIES**

ARTICLE 1. IN GENERAL RELATING TO THE ARIZONA SECURITIES ACT

Section

R14-4-121. Limitation on Activities of Securities Salesmen; Definitions

ARTICLE 1. IN GENERAL RELATING TO THE ARIZONA SECURITIES ACT

R14-4-121. Limitation on Activities of Securities Salesmen; Definitions

A. As used in this Section, the following terms have the meaning indicated:

1. "Affiliate" means a person that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with the person specified.
2. "Registered salesman" means an individual registered to sell securities pursuant to A.R.S. Title 44, Chapter 12, Article 9.

B. ~~Salesmen registered to sell securities pursuant to the Securities Act will not be allowed to sell securities for any more than 3 registered dealers during any 1-6 month period, and a registered salesman shall not be allowed to sell securities for more than one dealer at 1 in Arizona during the same time period; unless one of the following applies:~~

1. The dealers for which the registered salesman sells securities are affiliates.
2. The dealers have filed with the Commission a copy of a written agreement that the registered salesman may sell securities for each of the dealers, which is signed by all of the dealers.

NOTICE OF FINAL RULEMAKING

**TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS;
SECURITIES REGULATION**

**CHAPTER 4. CORPORATION COMMISSION
SECURITIES**

PREAMBLE

1. Sections Affected

R14-4-134

Rulemaking Action

Amend

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statutes: A.R.S. §§ 44-1821 and 44-1902

Implementing statute: A.R.S. § 44-1902

Constitutional authority: Arizona Constitution, Article XI, §§ 4, 6, and 13

Arizona Administrative Register
Notices of Final Rulemaking

3. The effective date of the rules:

February 15, 2003

4. A list of all previous notices appearing in the Register addressing the final rule:

Notice of Rulemaking Docket Opening: 7 A.A.R. 3123, July 20, 2001

Notice of Proposed Rulemaking: 7 A.A.R. 4846, October 19, 2001

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Cheryl T. Farson

Address: Arizona Corporation Commission, Securities Division
1300 W. Washington, 3rd Floor
Phoenix, AZ 85007-2996

Telephone: (602) 542-4242

Fax: (602) 594-7470

E-mail: cf@ccsd.cc.state.az.us

6. An explanation of the rule, including the agency's reasons for initiating the rule:

R14-4-134 "rule 134" provides for the registration of limited public securities offerings that do not exceed \$5 million, as authorized by A.R.S. § 44-1902. The Commission amends rule 134 to: (a) update the required application form U-7 and (b) reference two rules recently made by the Commission—R14-4-117 and R14-4-119—that apply to offerings registered under § 44-1902.

For the purpose of clarification, the Commission has made other changes in the rule format that do not change the substance of rule 134.

7. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rule or proposes 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 rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

The amendment to rule 134 does not diminish a previous grant of authority of a political subdivision of this state.

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

Pursuant to A.R.S. § 41-1055(D)(3), the Commission is exempt from providing an economic, small business, and consumer impact statement.

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

Not applicable

11. A summary of the principal comments and the agency response to them:

The Commission did not receive written comments on the rule.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

13. Incorporations by reference and their location in the rules:

None

14. Was this rule previously made as an emergency rule?

No

15. The full text of the rule follows:

**TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS;
SECURITIES REGULATION**

**CHAPTER 4. CORPORATION COMMISSION
SECURITIES**

ARTICLE 1. IN GENERAL RELATING TO THE ARIZONA SECURITIES ACT

Section

R14-4-134. Guidelines for Securities Filings under A.R.S. § 44-1902

ARTICLE 1. IN GENERAL RELATING TO THE ARIZONA SECURITIES ACT

R14-4-134. Guidelines for Securities Filings under A.R.S. § 44-1902

- A.** Uniform Limited Offering Registration (“ULOR”). An issuer may register securities by qualification under A.R.S. § 44-1902 in an aggregate amount not exceeding \$5 million in any 12-month period as provided in this Section.
- B.** ~~Incorporation by reference of Form U-7 and the Issuer’s Manual.~~
- ~~1. Any reference in this Section to Form U-7 means the Small Corporate Company Offering Registration Form (~~Form U-7~~) as adopted by the North American Securities Administrators Association, Inc. Any reference to the Issuer’s Manual means the Small Company Offering Registration Issuer’s Manual, which contains the requirements and general instructions for use of the Form U-7, as adopted by the North American Securities Administrators Association, Inc., on April 29, 1989, which is incorporated by reference and on file with the Secretary of State.~~
 2. Copies of Form U-7 and the Issuer’s Manual are available from the Commission and from the North American Securities Administrators Association, Inc.
 - ~~3. References to Form U-7 in this Section do not include any amendments or editions to Form U-7 adopted subsequent to April 29, 1989.~~
- C.** Qualification. To be eligible for registration under A.R.S. § 44-1902, the issuer shall comply with the following conditions:
1. The offering shall not be a blind pool offering as defined in A.R.S. § 44-1801.
 2. The issuer shall not be an investment company subject to the Investment Company Act of 1940.
 3. The issuer shall not be subject to the reporting requirements of Section 13 or Section 15(d) of the Securities Exchange Act of 1934.
 4. The issuer and offering must meet the qualifications for use set forth in the Part II (“Qualifications for Use of Form”) in the Instructions For Use of Form U-7 Issuer’s Manual.
 5. If the offering includes debt securities, the application for registration shall include information that demonstrates the ability of the issuer to service its debt.
- D.** Disclosure Document. The issuer shall apply for registration of securities by qualification under A.R.S. § 44-1902 by filing with the Commission Form U-7, with exhibits and such other documents as required by ~~Part V of the Instructions For Use of Form U-7, and such other documents as required by Part III(A) of the Instructions For Use of Form U-7~~ the Issuer’s Manual.
- E.** Financial Statements. The financial statements included in the application for registration shall be in the form provided in Part IV(K) of the Instructions For Use of Form U-7 the Issuer’s Manual. All prospective financial information that is included in the Form U-7 must be prepared or reviewed by an independent accounting firm.
- F.** Registration Fee. An application for registration shall be accompanied by a nonrefundable fee as provided in A.R.S. § 44-1861.
- G.** Issuer-Dealer Registration. An application for registration of securities also shall constitute an application for registration under A.R.S. § 44-1941 of the issuer as a dealer who deals exclusively in securities of which the dealer is the issuer (“issuer-dealer”) if accompanied by a duly completed Form BD, a brief description of the proposed method of sale, and other information required by A.R.S. § 44-1941. No bond shall be required for purposes of such issuer-dealer application. The Commission or the Director may require submission of additional information as to the issuer’s previous history, record, or business experience as deemed necessary to determine whether the issuer should be registered as a dealer, as provided under A.R.S. § 44-1942. Appropriate examinations may be required.
- ~~I.H.~~** Other Registration Requirements. ~~For each offer of securities, the issuer must deliver to each investor a copy of any literature mandated by the Commission, along with a Form U-7 that has been declared effective by the Commission and any supplements. In addition, the~~ The following applicable Sections shall apply to registration of securities by qualification under A.R.S. § 44-1902:
1. R14-4-103 (advertising and sales literature). The issuer shall not distribute advertising and sales materials prior to receipt of the ~~Commission’s Division’s~~ notification that the issuer may use the materials.
 2. R14-4-105 (promotional securities). For purposes of this Section, ~~the first sentence of R14-4-105(C) is revised as follows:~~

Arizona Administrative Register
Notices of Final Rulemaking

“Securities that are issued to promoters for consideration valued at less than the following percentages of the proposed public offering price, in an amount that represents an ultimate right of participation in excess of 60% percent of the securities to be outstanding at the completion of the proposed public offering, shall be promotional securities. The value of consideration other than cash received by the issuer for shares shall be established to the Commission’s satisfaction by appraisals, evidence of amounts paid by others for substantially similar services or property, evidence of a bona fide offer to purchase such services or property, evidence of significant services rendered or contractually required to be rendered to the issuer, which may take into account the relevant experience, special skills, and other qualifications of the person rendering the service, or any other evidence. The value of noncash consideration that cannot be established to the satisfaction of the Commission shall be zero.

“1. For all securities issued to a promoter within one year prior to and including the date of the offering of securities to the public: 85 percent.

“2. For all securities issued to a promoter within two years but not less than one year prior to and including the date of the offering of securities to the public: 75 percent.

“3. For all securities issued to a promoter within three years but not less than two years prior to and including the date of the offering of securities to the public: 65 percent.”

3. R14-4-106 (options, warrants, and rights to purchase).

4. R14-4-107 (promoters equity).

5. R14-4-108 (sales commission and expenses). For purposes of this Section R14-4-108(A) is revised as follows:

“No issuer shall incur a liability that must be paid by the issuer as a selling expense in connection with the offering of greater than 20% percent of the amount of the offering actually sold to the public.”

6. R14-4-110 (installment sales).

7. R14-4-111 (commissions to officers and directors).

8. R14-4-112 (impoundment of funds) and R14-4-113 (impound dates).

9. R14-4-117 (debt offerings).

10. R14-4-118 (statement statements required in prospectus).

11. R14-4-119 (preferred stock).

I. Delivery Requirements. The issuer must deliver to each offeree a copy of any literature mandated by the Commission, along with a Form U-7 that has been declared effective by the Commission and any supplements. As long as any securities sold in the offering are outstanding, the issuer shall deliver to investors any reports required by Form U-7 or under the Securities Exchange Act of 1934, unless there are ten or fewer shareholders and all of such shareholders consent in writing to the cessation of such reporting.

H.J. Reporting. After registration under A.R.S. § 44-1902, the issuer shall cause the following reports to be delivered to the Commission: The Commission may specify the forms necessary to fulfill the reporting requirements stated below.

1. Within ~~40~~ ten business days after every 90-calendar-day period following the effective date of the registration and on completion of the offering, a report stating the number of purchasers and the dollar amount of securities sold.

2. Within ~~40~~ ten business days after every 90-calendar-day period following the effective date of the registration and on completion of the offering, a statement reflecting that the issuer has not made any changes in or amendments to the Form U-7 or sales and advertising materials provided to the Commission, other than any changes or amendments filed with and declared effective or cleared by the Securities Division.

3. Within ~~40~~ ten business days after every ~~6~~ six-month period following the effective date of the registration and at such time as the proceeds have been completely used, a report stating in reasonable detail the issuer’s use of the offering proceeds.

4. ~~The Commission may specify the forms necessary to fulfill the reporting requirements stated above in subsections(1), (2), and (3).~~

5. ~~As long as any securities sold in the offering are outstanding, the issuer shall deliver to investors any reports required by Form U-7 or under the Securities Exchange Act of 1934, unless there are 10 or fewer shareholders and all of such shareholders consent in writing to the cessation of such reporting.~~

4. Within ten business days after delivery to investors, ~~In addition, the issuer shall deliver copies of~~ any other reports, brochures, letters, or such similar documents furnished, through any medium, to investors ~~or such other materials as the Commission may determine.~~