

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

CHAPTER 4. CORPORATION COMMISSION SECURITIES

[R06-231]

PREAMBLE

- 1. Sections Affected**
R14-4-149
- 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. §§ 44-1821 and 44-1845
Implementing statute: A.R.S. § 44-1844
Constitutional authority: Arizona Constitution, Article XV, §§ 6 and 13
- 3. The effective date of the rule:**
August 19, 2006
- 4. A list of all previous notices appearing in the Register addressing the final rule:**
Notice of Rulemaking Docket Opening: 11 A.A.R. 4311, October 28, 2005
Notice of Proposed Rulemaking: 11 A.A.R. 5036, December 2, 2005
- 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, Third Floor
Phoenix, AZ 85007-2996
Telephone: (602) 542-0193
Fax: (602) 594-7476
E-mail: cfarson@azcc.gov
- 6. An explanation of the rule, including the agency's reason for initiating the rule:**
R14-4-149 provides an exemption from registration for offers of securities made in accordance with the requirements under 17 CFR 230.134 (2001) ("rule 134³⁵"), 17 CFR 230.255 (2001) ("rule 255"), or 17 CFR 230.430 (2001) ("rule 430"). Rules 134, 255, and 430 are incorporated into R14-4-149 by reference in accordance with A.R.S. § 41-1028 and A.A.C. R1-1-414. As reflected in SEC Release No. 33-8591, the Securities and Exchange Commission has amended rule 134, effective December 1, 2005.
Additionally, as reflected in SEC Release No. 33-8088, the Securities and Exchange Commission amended rule 430 effective June 1, 2002. The amendment to rule 430 was a technical amendment to reflect the use of a new Securities and Exchange Commission registration form.
The Commission amends R14-4-149 to incorporate rules 134 and 430 as amended by the Securities and Exchange Commission.

Notices of Final Rulemaking

The Securities and Exchange Commission modified and expanded the information rule 134 permits issuers to provide to potential purchasers after an application for registration of a securities offering has been filed and before the registration is effective. The goal of the Securities and Exchange Commission is to enhance disclosure about upcoming securities offerings to investors while retaining appropriate issuer liability for the communications. The Commission amends Arizona rule 149 to reflect the changes made in federal law to benefit the public and investors by allowing issuers to provide the same information to Arizona investors that they may provide under federal law. The amendment does not jeopardize the investor protections contained in Arizona rule 149, which include the requirement that an issuer file an application for registration of the securities before offers can be made under the exemption, restrictions on content and manner of the exempted communications, prohibition on the use of the exemption by parties that fall within "bad boy" provisions, prohibitions on the use of the exemption for offers of securities defined by the Securities Act as blind pools or defined as speculative or high risk, and prohibitions on the actual sale of any securities until registration of the offering is effective.

7. **A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**
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
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 rules, including supplemental notices, and final rules (if applicable):**
None
11. **A summary of the comments made regarding the rule 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:**
17 CFR 230.134 (2006), 17 CFR 230.255 (2005), 17 CFR 230.430 (2005), located in R14-4-149(A)
14. **Was this rule previously made as an emergency rule?**
Not applicable
15. **The full text of the rules 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

- R14-4-149. Exemption from ~~registration~~ Registration for offers ~~Offers made~~ Made in connection ~~Connection~~ with a ~~pending~~ Pending application ~~Application~~

ARTICLE 1. IN GENERAL RELATING TO THE ARIZONA SECURITIES ACT

- R14-4-149. Exemption from ~~registration~~ Registration for offers ~~Offers made~~ Made in connection ~~Connection~~ with a ~~pending~~ Pending application ~~Application~~
- A. If all of the following apply, offers made in accordance with the requirements under U.S. Securities and Exchange Commission rule 134, 17 ~~C.F.R.~~ CFR 230.134 (~~2004~~2006), rule 255, 17 ~~C.F.R.~~ CFR 230.255 (~~2004~~2005), or rule 430, 17 ~~C.F.R.~~ CFR 230.430 (~~2004~~2005), which are incorporated by reference and contain no later editions or amendments, shall

be added to the class of transactions exempt under A.R.S. § 44-1844.

1. The issuer has applied for registration of the securities to which the offers relate under the Securities Act of 1933, or the securities are exempt from registration under that act.
 2. The issuer has filed with the Commission an application for registration of the securities to which the offers relate, or the issuer has filed a notice under A.R.S. § 44-1843.01(B).
 3. The issuer, or any of its predecessors, affiliates, directors, officers, general partners, or individuals holding a similar position of leadership, or beneficial owners of ~~ten~~ 10 percent or more of any class of its equity securities do not fall within any of the disqualification provisions of A.R.S. § 44-1901(G)(1) through (6).
 4. The issuer is not applying for registration under A.R.S. § 44-1902.
 5. The offering is not of a blind pool as defined in A.R.S. § 44-1801(1).
 6. The offering is not of speculative or high risk securities as defined by ~~A.A.C. R14-4-118(C)~~.
 7. No part of the purchase price is received until the securities are registered in Arizona, or the exemption under A.R.S. § 44-1843.01(B) is effective.
 8. An indication of interest in response to an offer made under this Section involves no obligation or commitment of any kind.
- B.** ~~The rules incorporated by reference are on file with the Office of the Secretary of State.~~ Copies of the incorporated material are available from the Commission and the Superintendent of Documents, Government Printing Office, Washington, DC, 20402. Copies are also available at <http://www.gpoaccess.gov/cfr/index.html>.