

ORIGINAL



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MEMORANDUM

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Cheryl T. Farson, General Counsel  
Corporation Commission—Securities Division  
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TO: Docket Control  
FROM: Cheryl T. Farson   
DATE: December 2, 2005  
RE: Docket # RS-00000A-05-0702

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Please file the attached published notice of proposed rulemaking in docket # RS-00000A-05-0702. No distribution is necessary.

Thank you.

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## NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

### NOTICE OF PROPOSED RULEMAKING

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

#### CHAPTER 4. CORPORATION COMMISSION SECURITIES

[R05-425]

#### PREAMBLE

1. **Sections Affected**  
R14-4-149
1. **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. **A list of all previous notices appearing in the Register addressing the proposed rule:**  
Notice of Rulemaking Docket Opening: 11 A.A.R. 4311, October 28, 2005
4. **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
5. **An explanation of the rule, including the agency's reasons for initiating the rule:**  
A.A.C. R14-4-149 provides an exemption from registration for offers of securities made in accordance with the requirements under 17 C.F.R. 230.134 (2001) ("rule 134"), 17 C.F.R. 230.255 (2001) ("rule 255"), or 17 C.F.R. 230.430 (2001) ("rule 430"). Rules 134, 255, and 430 are incorporated into A.A.C. 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 reflect in SEC Release No. 33-8088, the Securities and Exchange Commission amended rule 430 effective June 1, 2002.  
The Securities Division has recommended that the Commission amend A.A.C. R14-4-149 to incorporate rules 134 and 430 as amended by the Securities and Exchange Commission.
6. **A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on or 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

Notices of Proposed Rulemaking

7. 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
8. The preliminary 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.
9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:  
The individual named in item #4
10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:  
Date: January 17, 2006  
Time: 10:00 a.m.  
Location: Arizona Corporation Commission  
1200 W. Washington Ave.  
Phoenix, AZ 85007  
Nature: Oral proceeding. Subsequent to the oral proceeding, the Arizona Corporation Commission will taken final action at an open meeting with respect to the making of the proposed rule.
11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:  
None
12. Incorporations by reference and their location in the rules:  
17 C.F.R. 230.134 (2006), 17 C.F.R. 230.255 (2005), 17 C.F.R. 230.430 (2005), located in A.A.C. R14-4-149(A)
13. 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 for offers made in connection with a pending application

ARTICLE 1. IN GENERAL RELATING TO THE ARIZONA SECURITIES ACT

**R14-4-149. Exemption from registration for offers made in connection with a pending 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. 230.134 (~~2001~~2006), rule 255, 17 C.F.R. 230.255 (~~2001~~2005), or rule 430, 17 C.F.R. 230.430 (~~2001~~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 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.

Notices of Proposed Rulemaking

- § 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>.

**NOTICE OF PROPOSED RULEMAKING**

**TITLE 18. ENVIRONMENTAL QUALITY**

**CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY  
AIR POLLUTION CONTROL**

[R05-430]

**PREAMBLE**

**1. Sections Affected**

R18-2-101  
R18-2-302  
R18-2-304  
R18-2-306.01  
R18-2-317  
R18-2-330  
R18-2-331  
R18-2-406  
R18-2-507  
Article 17  
R18-2-1701  
R18-2-1702  
R18-2-1703  
R18-2-1704  
R18-2-1705  
R18-2-1706  
R18-2-1707  
R18-2-1708  
R18-2-1709  
Appendix 1  
Appendix 12

**Rulemaking Action**

Amend  
New Article  
New Section  
Amend  
New Appendix

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

Authorizing statutes: A.R.S. §§ 49-104(A)(1) and (A)(10), 49-425

Implementing statutes: A.R.S. §§ 49-426, 49-426.01, 49-426.04, 49-426.05, 49-426.06, 49-426.08

**3. A list of all previous notices appearing in the Register addressing the proposed rule:**

Notice of Rulemaking Docket Opening: 10 A.A.R. 4272, October 22, 2004

Notice of Termination of Rulemaking: 11 A.A.R. 3948, October 14, 2005

Notice of Rulemaking Docket Opening: 11 A.A.R. 3976, October 14, 2005

Notice of Rulemaking Docket Opening: 11 A.A.R. 5129, December 2, 2005

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

Name: Kevin Force

Address: Arizona Department of Environmental Quality  
1110 W. Washington Ave.  
Phoenix, AZ 85007