

NOTICES OF EXEMPT RULEMAKING

The Administrative Procedure Act requires the *Register* publication of the rules adopted by the state's agencies under an exemption from all or part of the Administrative Procedure Act. Some of these rules are exempted by A.R.S. § 41-1005 or 41-1057; other rules are exempted by other statutes; rules of the Corporation Commission are exempt from Attorney General review pursuant to a court decision as determined by the Corporation Commission.

NOTICE OF EXEMPT RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONAINMENT SYSTEM (AHCCCS) ADMINISTRATION

PREAMBLE

1. Sections Affected
R9-22-1204
- 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 statute: A.R.S. § 36-2903.01(H)
Implementing statute: A.R.S. §§ 36-2907(E)
3. The effective date of the rules:
January 1, 1996
4. A list of all previous notices appearing in the Register addressing the exempt rule:
Notice of Exempt Rulemaking:
1 A.A.R. 1932, October 20, 1995
5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:
Name: Fred Meister
Address: AHCCCS Administration
Office of Policy Analysis and Coordination
801 East Jefferson, Mail Drop 4200
Phoenix, Arizona 85034
Telephone: (602) 417-4462
Fax: (602) 256-6756
6. An explanation of the rule, including the agency's reasons for initiating the rule, including the statutory citation to the exemption from the regular rulemaking procedures:
Current ALTCS (acute care) behavioral health rules limit coverage of inpatient detoxification services to 4 days per admission.
Since there are cases, however, where it is medically necessary and clinically appropriate to exceed the 4-day limit, AHCCCS is amending the ALTCS behavioral health coverage rule to allow for appropriate continuation of care.
Laws 1995, Ch. 204, § 11 grants the Administration an exemption from the regular rulemaking process.
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 summary of the economic, small business, and consumer impact:
Not applicable.
9. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):
Not applicable.
10. A summary of the principal comments and the agency response to them:
Not applicable.

Arizona Administrative Register
Notices of Exempt Rulemaking

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

As required by Laws 1995, Ch. 204, § 11, AHCCCS is providing an opportunity for public comment and will make any necessary amendments to these rules. Public hearings, addressing the inpatient detoxification amendment, as well as prior behavioral health amendments effective October 1, 1995, are scheduled as follows:

Date: January 22, 1996
Time: 1:30 p.m.
Location: AHCCCS Administration
Hearing Room E
701 East Jefferson, Second Floor
Phoenix, Arizona

Date: January 23, 1996
Time: 1:30 p.m.
Location: AHCCCS Administration
Hermosillo Building, Third Floor
110 South Church Street, Suite 1360
Tucson, Arizona

12. Incorporations by reference and their location in the rules:
Not applicable.

13. Was this rule previously adopted as an emergency rule?
No.

14. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS)
ADMINISTRATION**

ARTICLE 12. BEHAVIORAL HEALTH SERVICES

Section

R9-28-1104. Covered Behavioral Health Services for Eligible Persons and Members

ARTICLE 12. BEHAVIORAL HEALTH SERVICES

R9-28-1104. Covered Behavioral Health Services for Eligible Persons and Members

A. No change.

B. The following behavioral health services shall be covered, subject to the limitations and exclusions in this Article, and further subject to approval by the Health Care Financing Administration.

1. Inpatient services, including:

- a. No change.
- b. No change.

c. No change.

d. Limitations:

i. No change.

ii. Inpatient substance abuse services are initially may be limited authorized for up to a maximum of 4 days of medically necessary detoxification per admission. If medically necessary, additional days subsequently may be authorized if ordered by a physician and approved by the contractor's Medical Director, RHBA, or the Administration.

2. No change.

3. No change.

4. No change.

5. No change.

6. No change.

NOTICE OF EXEMPT RULEMAKING

TITLE 9. HEALTH SERVICES

**CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS)
ARIZONA LONG-TERM CARE SYSTEM**

PREAMBLE

1. Sections Affected
R9-28-1104

Rulemaking Action
Amend

Arizona Administrative Register
Notices of Exempt Rulemaking

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

Authorizing statute: A.R.S. § 36-2932(P)
Implementing statutes: A.R.S. §§ 36-2907(E) and 36-2939(A)(2)

3. The effective date of the rules:

January 1, 1996

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

Notice of Proposed Rulemaking:
1 A.A.R. 1936, October 20, 1995

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

Name: Fred Meister
Address: AHCCCS Administration
Office of Policy Analysis and Coordination
801 East Jefferson, Mail Drop 4200
Phoenix, Arizona 85034
Telephone: (602) 417-4462
Fax: (602) 256-6756

6. An explanation of the rule, including the agency's reasons for initiating the rule, including the statutory citation to the exemption from the regular rulemaking procedures:

Current ALTCS behavioral health rules limit coverage of inpatient detoxification services to 4 days per admission.

Since there are cases, however, where it is medically necessary and clinically appropriate to exceed the 4-day limit, AHCCCS is amending the ALTCS behavioral health coverage rule to allow for appropriate continuation of care.

Laws 1995, Ch. 204, § 11 grants the Administration an exemption from the regular rulemaking process.

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 summary of the economic, small business, and consumer impact:

Not applicable.

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

Not applicable.

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

Not applicable.

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

As required by Laws 1995, Ch. 204, § 11, AHCCCS is providing an opportunity for public comment and will make any necessary amendments to these rules. Public hearings, addressing the inpatient detoxification amendment, as well as prior behavioral health amendments effective October 1, 1995, are scheduled as follows:

Date: January 22, 1996
Time: 1:30 p.m.
Location: AHCCCS Administration
Hearing Room E
701 East Jefferson, Second Floor
Phoenix, Arizona

Date: January 23, 1996
Time: 1:30 p.m.
Location: AHCCCS Administration
Hermosillo Building, Third Floor
110 South Church Street, Suite 1360
Tucson, Arizona

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

Not applicable.

13. Was this rule previously adopted as an emergency rule?

No.

Arizona Administrative Register
Notices of Exempt Rulemaking

14. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS)
ARIZONA LONG-TERM CARE SYSTEM

ARTICLE 11. BEHAVIORIAL HEALTH SERVICES

Section

R9-28-1104. ALTCS-covered Behavioral Health Services

ARTICLE 11. BEHAVIORIAL HEALTH SERVICES

R9-28-1104. ALTCS-covered Behavioral Health Services

A. No change.

B. The following behavioral health services shall be covered, subject to the limitations and exclusions in this Article, and further subject to approval by the Health Care Financing Administration.

1. Inpatient services, including:

- a. No change.
- b. No change.
- c. No change.

d. Limitations:

i. Inpatient substance abuse services ~~are initially~~ may be limited authorized for up to a maximum of 4 days of medically necessary detoxification per admission. If medically necessary, additional days subsequently may be authorized if ordered by a physician and approved by the program contractor's Medical Director or the Administration.

ii. No change.

- 2. No change.
- 3. No change.
- 4. No change.
- 5. No change.
- 6. No change.

NOTICE OF EXEMPT RULEMAKING

The Arizona State Parks Board has adopted R12-8-109 and R12-8-110 as new Sections under the exempt rulemaking process before repealing the current Sections on file with the Secretary of State. The Board will be repealing the old language soon.

TITLE 12. NATURAL RESOURCES

CHAPTER 8. ARIZONA STATE PARKS BOARD

PREAMBLE

1. Sections Affected

R12-8-109
R12-8-110

Rulemaking Action

New Section
New Section

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

Authorizing statute: A.R.S. § 41-511.05(8)

Implementing statute: A.R.S. § 41-511.05(8)

3. The effective date of the rules:

January 1, 1996

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

None

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

Name: Leslie Schwalbe
Address: Arizona State Parks Board
1300 West Washington
Phoenix, Arizona 85007
Telephone: (602) 542-4174
Fax: (602) 542-4180

6. An explanation of the rule, including the agency's reasons for initiating the rule, including the statutory citation to the exemption from the regular rulemaking procedures:

R-12-8-109, Fees and Permits, and R12-8-110, Fee Waivers, set the fees for visitor use and commercial use at Arizona State Parks. Each year, Arizona State Parks staff reviews the fee structures and makes recommendations to the Board for revisions. In the analysis, Arizona State Parks staff reviews fee structures of surrounding states, operation and development costs of the State Park Sys-

Arizona Administrative Register
Notices of Exempt Rulemaking

tem, and the public demand for park services and subsequent impacts of visitor use on park resources. The agency actively pursues public input into the fee structure through regional meetings throughout the state. Rule changes include the establishment of an unlimited Day-use Permit; and changes to fee structures at Lake Havasu, Buckskin Mountain, and Cattail Cove State Parks for peak and off-peak days. These rules are exempt from the regular rulemaking procedures pursuant to § 41-1005(A)(21).

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 summary of the economic, small business, and consumer impact:
Not applicable.
9. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):
Not applicable.
10. A summary of the principal comments and the agency response to them:
Not applicable.
11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:
Not applicable.
12. Incorporations by reference and their location in the rules:
Not applicable.
13. Was this rule previously adopted as an emergency rule?
No.
14. The full text of the rules follows:

TITLE 12. NATURAL RESOURCES

CHAPTER 8. ARIZONA STATE PARKS BOARD

ARTICLE 1. GENERAL PROVISIONS

R12-8-109. Fees and Permits

R12-8-110. Fee Wavers

ARTICLE 1. GENERAL PROVISIONS

R12-8-109. Fees and Permits

A. Annual Fee Review. The Board shall annually review and set fees for entrance, camping, and overnight parking at state park facilities. The fees shall be posted at each state park and printed in appropriate state park literature for public information. Fees shall be based upon analysis of the following criteria:

1. Fee and permit charges by state park agencies of the 11 western states and similar facilities within Arizona.
2. Arizona State Parks operational and development costs.
3. Public demand for services, and
4. Impacts upon park resources.

B. Entrance, camping, and overnight parking fees/permits

1. Entrance

a. Historic facility (all historic parks): individual 12-17 years, \$1.00; 18 years and above:

Group 1-6,	\$2.00/person;
Group 7-12,	\$1.80/person;
Group 13-19,	\$1.60/person;
Group 20+,	\$1.40/person.

b. Interpretive program and entrance fee: individual 12-17 years, \$2.00; 18 years and above:

Group 1-6,	\$3.00/person;
Group 7-12,	\$2.70/person;
Group 13-19,	\$2.40/person;
Group 20+,	\$2.10/person.

c. Recreational facility individual not in motorized vehicle 12 years and above, \$1.00.

d. Recreational facility at Patagonia Lake, Dead Horse Ranch, Fool Hollow, Tonto Natural Bridge, and Slide Rock State Parks, and program fee at Red

Rock State Park:

Per vehicle with group of 1-6, \$5.00;

Per vehicle with group of 7-12, \$10.00;

Per vehicle with group of 13-18, \$15.00;

Per vehicle with group of 19-24, \$20.00.

\$5.00 additional for increments of 6 individuals or less per vehicle above 24 in a group.

e. Recreational facility at Buckskin Mountain, Cattail Cove, and Lake Havasu State Parks on Monday, Tuesday, Wednesday, and Thursday except state-observed holidays:

Per vehicle with group of 1-6, \$4.00;

Per vehicle with group of 7-12, \$8.00;

Per vehicle with group of 13-18, \$12.00;

Per vehicle with group of 19-24, \$16.00;

\$4.00 additional for increments of 6 individuals or less per vehicle above 24 in a group.

f. Recreational facility at Buckskin Mountain, Cattail Cove, and Lake Havasu State Parks on Friday, Saturday, Sunday, and state-observed holidays:

Per vehicle with group of 1-6, \$7.00;

Per vehicle with group of 7-12, \$14.00;

Per vehicle with group of 13-18, \$21.00;

Per vehicle with group of 19-24, \$28.00;

\$7.00 additional for increments of 6 individuals or less per vehicle above 24 in a group.

g. Recreational facility at all other parks not noted in subsection (B)(1)(d), (e), or (f):

Per vehicle w/group of 1-6, \$3.00;

Per vehicle w/group of 7-12, \$6.00;

Per vehicle w/group of 13-18, \$9.00;

Per vehicle w/group of 19-24, \$12.00;

\$3.00 additional for increments of 6 individuals or less per vehicle above 24 in a group.

h. Group/day use area reservation at all parks: \$10.00;

Arizona Administrative Register
Notices of Exempt Rulemaking

- i. Limited annual permit valid at all parks except Buckskin Mountain, Cattail Cove, and Lake Havasu State Parks on Friday, Saturday, Sunday, and state-observed holidays: \$35.00
 - i. Unlimited annual permit valid at all parks at all times: \$65.00
- 2. Camping**
- a. At Alamo Lake, Catalina, Homolovi Ruins, Lost Dutchman, Picacho Peak, Lyman Lake, and Roper Lake State Parks:
 - i. Nightly camp site, \$8.00/vehicle or boat;
 - ii. Hook-up site, \$13.00/vehicle.
 - b. At Fool Hollow Recreational Area, Dead Horse Ranch, Patagonia Lake, Cattail Cove, Buckskin Mountain, and Lake Havasu State Parks:
 - i. Nightly camp site, \$10.00/vehicle or boat;
 - ii. Hook-up site, \$15.00/vehicle or boat;
 - iii. Cabana, \$20.00 per vehicle.;
 - iv. Off-season, long-term, weekly permit (fee calculation for stay of 7 days: rate equals appropriate fee for site for 5 days):
 - (1) Camp site, \$40.00-\$50.00/vehicle or boat;
 - (2) Hook-up site at Alamo Lake, Lyman Lake, Roper Lake, Lost Dutchman, Homolovi Ruins, Picacho Peak, and Catalina, \$65.00/vehicle or boat;
 - (3) Hook-up site at all other parks, \$75.00/vehicle or boat;
 - (4) Cabana, \$75.00/vehicle.
 - v. Group area reservation (all parks), \$25.00.
 - c. Overnight parking not in a camp site, \$3.00-\$5.00/vehicle each night (same as the individual park entrance fee).
- C. Special Use Fees**
- 1. The Director may negotiate a specific fee for special uses. The range for non-commercial and commercial uses at state park facilities shall be the fee charged unless the Executive Director determines that an increase is justified based upon analysis of the following criteria:
 - a. Park expenses resulting from the special use,
 - b. Loss of revenue resulting from the special use,
 - c. Impacts upon park resources and visitors as a result of the special use, or
 - d. The goodwill produced by informing or educating the public.
- 2. Non-commercial and commercial special use fees:
 - a. Non commercial, \$25-\$50 per room or area/4 hours;
 - b. Commercial, \$50-\$100 per room or area/4 hours;
 - c. Commercial photography, \$50-\$10,000 per 4 hours;
 - d. Damage deposit, \$25-\$500 per room or area.
- D. Special program fees. A special program fee for events sponsored by state parks may be assessed or park fees during the event may be waived. If assessed, this fee shall be established by the Executive Director according to the criteria specified in subsection (C)(1). Special program fees shall be established in advance of the event and posted as stated in this rule.**
- E. Commercial Vehicle Access Permit (CVAP) will be required by any person that enters a state park to conduct any portion of a business that is not covered by a concession agreement or special use permit. The fees for a CVAP are as follows:**
- 1. Administrative fee, 1 pass: \$200;
 - 2. Additional passes, maximum of 2; \$100 each.
- R12-8-110. Fee Waivers**
- A. The Park Manager, or official designee of the Park Manager, is authorized to grant waivers of the entrance fee to educational and handicapped groups in accordance with the following guidelines:
 - 1. Tour by preschools and accredited K-12 school groups shall be related to the group's current curriculum or program of study. The curriculum will be sufficiently formal so that academic credit or a certificate is awarded at the program's end. The program must meet more than 5 class meetings on separate days.
 - 2. Professional groups shall be participating in a parks and recreation or historic and interpretive seminar or conference tour.
 - 3. Handicapped groups shall be affiliated with non-profit organizations or agencies certified for their care, rehabilitation, training, or service. For the purpose of this rule, handicapped is defined as blind and visually impaired; deaf and hard of hearing; mobility impaired; developmentally disabled.
 - B. Persons serving in a volunteer capacity with a signed volunteer agreement with Arizona State Parks are exempt from all fees.
 - C. No fees shall be charged on Christmas Day.
 - D. The Director or the Director's designee may modify any and all rates prescribed in R12-8-109 and R12-8-110 to include discounts, promotional rates, and other modifications.

NOTICE OF EXEMPT RULEMAKING

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

**CHAPTER 4. CORPORATION COMMISSION
SECURITIES**

PREAMBLE

1. <u>Sections Affected</u>	<u>Rulemaking Action</u>
R14-4-117	Repeal
R14-4-301	Amend
R14-4-302	Amend
R14-4-303	Amend
R14-4-304	Amend
R14-4-305	Amend
R14-4-306	Amend

Arizona Administrative Register

Notices of Exempt Rulemaking

R14-4-307
R14-4-308

Amend
Amend

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

Constitutional authority: Arizona Constitution Article 15, §§ 4, 6, and 13
Authorizing statute: A.R.S. §§ 44-1821 and 44-3131
Implementing statute: A.R.S. §§ 44-1822, 44-1823, 44-1971, 44-1972, 44-1973, 44-2032, 44-2036, 44-3211, 44-3212, 44-3213, 44-3292, and 44-3296

3. The effective date of the rule:

December 21, 1995

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

Notice of Rulemaking Docket Opening:

1 A.A.R. 169, March 10, 1995

Notice of Proposed Rulemaking:

1 A.A.R. 1316, August 11, 1995

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

Name: Richard M. Weinroth, General Counsel

Address: Corporation Commission, Securities Division
1300 West Washington, Third Floor
Phoenix, AZ 85007

Telephone: (602) 542-4242

Fax: (602) 542-3583

6. An explanation of the rule, including the agency's reasons for initiating the rule, including the statutory citation to the exemption from the regular rulemaking process:

The Commission proposed the amendment of R14-4-301 through R14-4-308 (the "Enforcement Rules") and the repeal of R14-4-117. The Commission proposed the amendments to the Enforcement Rules to extend their scope to include enforcement actions brought pursuant to the Arizona Investment Management Act, A.R.S. § 44-3101 et seq., (the "IM Act"). The amendments, in conjunction with the proposed Investment Adviser rules (proposed R14-6-101 through R14-6-209) will provide a comprehensive system of regulation in Arizona for investment advisers and their representatives. Further, the amendments to the Enforcement Rules will aid in the prosecution of securities and investment adviser fraud in Arizona and produce more efficient administrative proceedings. Some of these changes include: the provision for methods of service of subpoenas, notices, and orders in foreign countries; modification of provisions relating to service completion; providing when service of process on a respondent's attorney will be valid service on the respondent; and making it an administrative rule violation for a witness to knowingly make a material misstatement or omission during a formal interview. The Commission also proposed the repeal of R14-4-117. The substance of this rule has been added to amended R14-4-303, rendering R14-4-117 obsolete. The rule amendments are as follows:

R14-4-301, Scope of Article: provides that the Enforcement Rules apply to examinations and investigations conducted under either the Arizona Securities Act, A.R.S. § 44-1801 et seq. (the "Securities Act"), or the IM Act and updates the reference to the Commission's rules of practice and procedure.

R14-4-302, Definitions: deletes superfluous definitions already contained in the Securities Act and the IM Act and adds definitions to be used in the Enforcement Rules, as amended.

R14-4-303, Confidentiality: provides for confidentiality of information obtained during an investigation or examination except under limited circumstances and combines the substance of R14-4-117 and original R14-4-303 into 1 rule.

R14-4-304, Methods of Service of Subpoenas, Notices, Orders, and Other Administrative Documents: extends the scope of the rule to include subpoenas, notices, and orders issued under the IM Act and any other administrative documents filed in an administrative proceeding under the Securities Act or the IM Act; modifies the provisions relating to service completion including a provision deeming service of an order, after initial service had been made, to be complete upon mailing to respondent's last known address; provides methods of service in foreign countries; adds a provision for service on a respondent's attorney; clarifies how various types of entities may be served; and makes certain technical clarifications.

R14-4-305, Rights of Witnesses; Formal Interviews; Procedures: creates a rule violation when a witness in a formal interview knowingly makes a material misstatement or omission and clarifies that the rule applies to both examinations and investigations conducted under the Securities Act or the IM Act.

R14-4-306, Notice of an Opportunity for a Hearing and Notice of a Hearing: extends the applicability of the rule to include notices issued under the IM Act; clarifies methods available to serve notices of an opportunity for a hearing and notices of a hearing; and states that hearings must be held within a specified time unless otherwise provided by law, stipulated by the parties, or ordered by the Commission.

R14-4-307, Temporary Cease-and-Desist Orders: makes technical changes to the rule and clarifies who may appropriately serve a temporary cease-and-desist order.

Arizona Administrative Register
Notices of Exempt Rulemaking

R14-4-308, Rescission and Restitution: extends the scope of the rule to apply to rescission and restitution ordered under the IM Act; clarifies certain rule provisions; and provides the Commission more flexibility in issuing rescission and restitution orders in order to promote the public interest.

R14-4-117, Non-disclosure of information obtained in the course of examinations and investigations: repeals this rule as duplicative and obsolete in light of proposed amendment to R14-4-303.

The rule repeal and rule amendments are exempt from the Governor's Regulatory Review Council review pursuant to A.R.S. § 41-1057. The rule repeal and the rule amendments are exempt from Attorney General certification pursuant to the Arizona Constitution Article 15, §§ 4, 6, and 13, and *State ex rel. Corbin v. Arizona Corporation Commission*, 174 Ariz. 216, 848 P.2d 301 (App. 1992).

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 summary of the economic, small business and consumer impact:

The amendments to the Enforcement Rules and the repeal of R14-4-117 will not impose additional costs on businesses in the securities industry. In fact, the amendments may reduce costs by producing more efficient administrative proceedings. For the investment advisory industry, the same should hold true. Since the Enforcement Rules did not previously apply to the IM Act, the rights and obligations of an investment adviser or investment adviser representative subject to an investigation or enforcement action may have been somewhat unclear. The adoption of the proposed amendments and the repeal of R14-4-117 will clarify these rights and obligations and resolve any ambiguities. This should be especially helpful to businesses which might not be familiar with administrative proceedings. Additionally, the new flexibility provided for restitution and rescission under the amendment to R14-4-308 will benefit consumers, the securities industry, and the investment advisory industry by allowing for greater flexibility in resolving disputed matters.

The amendments make no distinction for small businesses. However, the amendments have the benefit of clarifying the rights and obligations of such a business when involved in an investigation or enforcement proceeding. Thus, the amendments should be beneficial to small businesses.

Consumers should benefit from the amendments to the Enforcement Rules and the repeal of R14-4-117 as the amendments will subject investment advisers and their representatives to the Enforcement Rules. Also, this will provide the Commission with more regulatory tools with which to combat fraudulent activity and should result in a reduction in the incidence of fraud in the securities and investment advisory industries.

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

The heading of Article 3 has been changed from "Rules Relating to Enforcement" to "Provisions Relating to Enforcement". All references to the "Arizona Revised Statutes" was changed to "A.R.S." References made to "A.A.C." were deleted. The incorporation by reference of the Hague Convention that appeared in R14-4-304(E)(1) in the Notice of Proposed Rulemaking has been moved to R14-4-302(4) and all subsequent definitions have been renumbered accordingly. Additionally, in the definition of the Hague Convention, the abbreviation "U.S.T." has been deleted and replaced with "U.S. Treaties and Other International Agreements." An unlabeled subsection in R14-4-305 has been labeled subsection (C) and all subsequent subsections were relabeled accordingly. R14-4-302(1), R14-4-304(A), and R14-4-305(C) & (G) have been modified for gender neutrality. In R14-4-308(A), the word "person(s)" has been replaced with the words "person or persons." The middle sentence of R14-4-308(B)(3) has been modified for clarity. Additional minor grammatical and technical changes appear as were suggested by the Secretary of State.

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

No comments were received.

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:

The Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents, Nov. 15, 1965, 20 U.S. Treaties and Other International Agreements 361, appears in R14-4-302(4). The Hague Convention is available from the Securities Division of the Arizona Corporation Commission, Phoenix, Arizona, or the Treaty Affairs Section, Office of the Legal Adviser, Department of State, Washington, D.C. 20520.

13. Was this rule previously adopted as an emergency rule?:

No

14. The full text of the rules follows:

Arizona Administrative Register
Notices of Exempt Rulemaking

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

R14-4-117. ~~Non-disclosure of information obtained in the course of examinations and investigations~~

ARTICLE 3. RULES PROVISIONS RELATING TO ENFORCEMENT

- R14-4-301. Scope of Article
- R14-4-302. Definitions
- R14-4-303. Confidentiality
- R14-4-304. Methods of Service of Subpoenas, Notices, Orders, and Other Administrative Documents
- R14-4-305. Rights of Witnesses; Formal Interviews; Procedures
- R14-4-306. Notice of an Opportunity for a Hearing and Notice of a Hearing
- R14-4-307. Temporary cease-and-desist orders
- R14-4-308. Rescission and Restitution

ARTICLE 1. IN GENERAL RELATING TO THE ARIZONA SECURITIES ACT

R14-4-117. ~~Non-disclosure of information obtained in the course of examinations and investigations~~

~~Information or documents obtained by officers, by employees of the securities division in the course of any examination or investigation shall, unless made a matter of public record, be deemed confidential. Officers and employees are hereby prohibited from making such confidential information available to anyone other than a member of the Commission, officer or employee, unless the Commission or the Director of Securities authorized the disclosure of such information or the production of such documents as not being contrary to the public interest.~~

ARTICLE 3. RULES PROVISIONS RELATING TO ENFORCEMENT

R14-4-301. Scope of Article

This Article applies ~~only~~ to investigations and examinations conducted pursuant to the provisions of the Securities Act and the IM Act, and to any orders issued under such acts, A.R.S. §§44-1822 and 44-1823 and cease and desist orders issued pursuant to A.R.S. §44-2032. When not in conflict with this Article, the applicable provisions of A.A.C. R14-3-101 through R14-3-112 R14-3-113 also shall also apply.

R14-4-302. Definitions

The following definitions shall apply to this Article 3 for the purposes of the rule unless the context otherwise requires:

1. "Attorney General" means the duly qualified and acting Attorney General of Arizona or his the Attorney General's duly appointed assistant.
2. "Commission" means the Arizona Corporation Commission.
3. "Director" means the Director of the Securities Division of the Arizona Corporation Commission or a person delegated by the Director to act on his behalf.
4. "Division" means the Securities Division of the Arizona Corporation Commission.
5. "Formal interview" means the examination under oath of an individual compelled or requested to testify as part of an investigation or examination under this Article.

4. "Hague Convention" means the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents, Nov. 15, 1965, 20 U.S. Treaties and Other International Agreements 361, which is incorporated herein by reference, does not contain any later amendments or editions, and is on file in the Office of the Secretary of State. Copies of the Hague Convention are available from the Securities Division of the Arizona Corporation Commission and from the Treaty Affairs Section, Office of the Legal Adviser, Department of State, Washington, D.C. 20520.
5. "IM Act" means the Arizona Investment Management Act, A.R.S. § 44-3101 et seq.
6. "Person" means an individual, corporation, partnership, association, joint stock company, trust, or any other unincorporated organization.
7. "Respondent" means any person who has been captioned in or served a notice or order of the Commission.
7. "Securities Act" means the Securities Act of Arizona, A.R.S. § 44-1801 et seq.
8. "Unincorporated organization" includes a limited liability company for purposes of the definition of "person," as defined in A.R.S. § 44-1801(13).

R14-4-303. Confidentiality

All information or documents obtained by officers, employees, or agents of the Commission, including, but not limited to, the shorthand reporter or stenographer transcribing the reporter's notes, in the course of any examination or investigation shall, unless made a matter of public record, be deemed confidential. Officers, employees, and agents are prohibited from making such confidential information available to anyone other than a member, officer, or employee of the Commission, agents designated by the Commission or Director, the Attorney General, and law enforcement or regulatory officials, except in accordance with any rule of the Commission or unless the Commission or the Director authorizes the disclosure of such information or documents as not contrary to the public interest the Division during the course of any nonpublic investigation are confidential and shall not be disclosed by anyone, including the certified shorthand reporter or the typist who transcribes the reporter's notes, except as permitted under R14-4-117 to anyone other than members or employees of the Commission, the Attorney General, and law enforcement and regulatory officials.

R14-4-304. Methods of Service of subpoenas Subpoenas, Notices, Orders, and Other Administrative Documents and cease and desist orders

- A. Subpoenas, notices, and orders issued pursuant to the Securities Act or the IM Act, and any other documents filed in an administrative proceeding under the Securities Act or the IM Act, A.R.S. §44-1823 and cease and desist orders issued pursuant to A.R.S. §44-2032 may be served by a sheriff, by his the sheriff's deputy, by an employee of the Commission, or by any other person who is not less than 18 years of age and who is authorized by the Division or the Commission to serve its the Commission's subpoena, notice, order, or other documents filed in the administrative proceeding or cease and desist order.
- B. Subpoenas, notices, orders, and other documents filed in an administrative proceeding cease and desist orders may be

Arizona Administrative Register
Notices of Exempt Rulemaking

served upon a natural person including, but not limited to, a dealer, salesman, investment adviser, or investment adviser representative, as follows:

1. By personal service.
 2. By leaving a copy at the person's dwelling house, or usual place of abode, with a person of suitable age and discretion, but not less than 16 years of age, then residing therein.
 3. By leaving a copy at the person's usual place of business or employment with an employee, express or implied agent, supervisor, owner, officer, partner or other similar person of suitable age and discretion, but not less than 16 years of age.
 4. By leaving delivering a copy with to an agent authorized by express or implied appointment or by law to receive service of process for the person to whom the subpoena, notice, or order or the cease-and-desist order is addressed.
 5. By mailing a copy of the subpoena, notice, or order or the cease-and-desist order in an envelope addressed to the last known home dwelling house or usual place of abode or last known business address, postage prepaid. This envelope Subpoenas, notices, and temporary cease-and-desist orders shall be sent postage prepaid, by certified mail, with return receipt requested. The signed return receipt shall constitute proof of service of subpoenas, notices, and temporary cease-and-desist orders but shall not be the exclusive method of proving service. Service of all other orders or other documents filed in the administrative proceeding shall be deemed complete when a copy in an envelope, addressed to the last known dwelling house or usual place of abode or last known business address, is deposited in the United States mail with 1st class postage prepaid.
- C. A Subpoenas subpoena, notice, order, or other document filed in an administrative proceeding may be served upon or cease-and-desist orders addressed to a corporations corporation, partnerships partnership, trusts, limited liability company, association, or and other business entities entity, including but not limited to a dealer or an investment adviser, may be served by as follows:
1. By leaving a copy with an employee, of suitable age and discretion, but not less than 16 years of age, at any place of business of the corporation, partnership, trust, limited liability company, association, or other business entity; or
 2. By leaving upon a copy with any officer, or director of a corporation, managing or general partner of a partnership, or trustee of a trust, member of a member-managed limited liability company or manager of a manager-managed limited liability company, or any authorized representative of an association or other business entity; or upon
 3. By leaving a copy with any agent authorized by express or implied appointment or by law to receive service of process for the entity to whom the subpoena, notice, or order or cease-and-desist order is addressed; or
 4. By mailing a copy to the last known business address, postage prepaid. Subpoenas, notices, and temporary cease-and-desist orders shall be sent postage prepaid, by certified mail, with return receipt requested. The signed return receipt shall constitute proof of service of subpoenas, notices, and temporary cease-and-desist orders but shall not be the exclusive method of proving service. Service of all other orders or other documents filed in the administrative proceeding shall be deemed complete when a copy in an envelope, addressed to the last known business address, is deposited in the United States mail with 1st class postage prepaid. The copy shall be sent cer-

tifed mail, return receipt requested. The signed return receipt shall constitute proof of service.

- D. Subpoenas issued under this Article may be amended at any time and the amended subpoena may be served as provided herein. Unless otherwise ordered by the Commission, when a respondent has been served with a notice or a temporary cease-and-desist order and the respondent is represented by an attorney in the administrative proceeding relating to the notice or the temporary cease-and-desist order, service upon the respondent shall be made by making service upon the attorney. Service upon the attorney shall be deemed complete when a copy of any amended notice, order, or other documents filed in the administrative proceeding, addressed to the last known business address of the attorney, is deposited in the United States mail with 1st class postage prepaid.
- E. Unless otherwise provided by law, service may be effected in a foreign country:
 1. By any internationally agreed means reasonably calculated to give notice, such as those means authorized by the Hague Convention, provided, however, that if service is not effected within 6 months from the date on which the assistance of the government of the foreign country was requested pursuant to the applicable treaty or convention, service may be effected as directed by the Commission; or
 2. If internationally agreed means of service are unavailable, provided that service is reasonably calculated to give notice:
 - a. In the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction; or
 - b. As directed by the foreign authority in response to a letter rogatory or letter of request; or
 - c. Unless prohibited by the law of the foreign country, by
 - i. Delivery of copies of the subpoena, notice, order, or other document filed in the administrative proceeding to the party to be served personally; or
 - ii. Any form of mail requiring a signed receipt, to be addressed and dispatched by the Commission to the party to be served; or
 - iii. Diplomatic or consular officers when authorized by the United States Department of State; or
 - d. If there is no lawful means by which service can be effected in the foreign country, such means as the Commission shall direct.

R14-4-305. Rights of Witnesses; Formal Interview; Procedures

- A. Any person required or requested to appear as a witness in person at a formal interview may be accompanied, represented, and advised by a lawyer legal counsel. The lawyer's role during the formal interview shall be limited to the following activities: right to be accompanied, represented, and advised by counsel means the right for the witness to have a lawyer present with him during the formal interview and to have his lawyer;
 1. Giving Give legal advice to the witness such person before, during, and after the formal interview;
 2. Questioning the witness such person briefly at the conclusion of the formal interview for the purpose of clarifying any of the testimony the witness such person has given; and

Notices of Exempt Rulemaking

3. ~~Make~~ Make summary notes during the formal interview solely for the use of the witness and ~~the lawyer his~~ the lawyer his counsel.
- B. Notwithstanding subsection (A) the following lawyers may not represent witnesses:
 1. Any lawyer who has represented another witness who has testified at a formal interview in the examination or investigation;
 2. Any lawyer who has represented another person who is a subject of the examination or investigation;
 3. Any lawyer who may be a material witness in the examination or investigation;
 4. Any lawyer who is a subject of the examination or investigation.
- C. The Director may permit a lawyer to represent a witness in those situations described in subsections (B)(1) through (B)(4) above upon a showing that such representation should be permitted in the interest of justice and will not obstruct the examination or investigation. If a lawyer is not permitted to represent a witness under ~~this~~ this subsection (B), that lawyer's partners or associates of ~~his~~ the lawyer's law firm are also precluded from representing the witness.
- ~~E.D.~~ All formal interviews may be recorded by the Division either mechanically or by a certified shorthand reporter employed by the Division. No other recording of the formal interview will be permitted, except summary note taking ~~will be allowed~~.
- ~~D.E.~~ Unless permitted in the discretion of the Division, no witness or ~~lawyer the counsel~~ lawyer the counsel accompanying ~~any~~ such witness shall be permitted to be present during the formal interview of any other witness testifying in a nonpublic examination or investigation. No person not employed by the Commission or the Attorney General shall be present during a formal interview except that the Division may authorize members of law enforcement ~~and or~~ and other state, federal, or self-regulatory agencies to be present during such formal interview.
- ~~E.F.~~ The Division may exclude from ~~an a formal~~ a formal interview any person previously permitted to attend the formal interview, including ~~counsel a lawyer~~ a lawyer, whose conduct is dilatory, obstructionist, or contumacious. In addition, the members of the staff of the Division conducting the formal interview may report the conduct to the Director for appropriate action. The Director may thereupon take such further action as the circumstances may warrant, including, but not limited to, exclusion from further participation in the examination or investigation.
- ~~F.G.~~ A person who has submitted documentary evidence or testimony in connection with a formal interview shall be entitled, upon written request, and upon proper identification, to inspect the witness' own testimony on a date to be set by the Director. The Director may delay the inspection of the record until the conclusion of the examination or investigation if in ~~his~~ the Director's discretion ~~he~~ the Director determines that earlier inspection may obstruct or delay the examination or investigation.
- ~~G.H.~~ In connection with an examination or investigation, the Director may delegate authority to members of the staff to administer oaths and affirmations, sign subpoenas, take evidence and receive books, papers, contracts, agreements, or other documents, records, or information, whether filed or kept in original or copied form or electronically stored or recorded.
- I. During a formal interview, a witness shall not knowingly make any untrue statements of material fact or omit to state any material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

R14-4-306. Notice of an Opportunity for a Hearing and Notice of a Hearing

- A. The Commission may issue a notice of an opportunity for a hearing or a notice of a hearing to determine whether to issue a cease-and-desist order, order of rescission, restitution, or penalties, or other order ~~as~~ authorized pursuant to the provisions of A.R.S. § 44-2032(1) the Securities Act or the IM Act.
- B. ~~A~~ Notices notice of an opportunity for a hearing and a notice of a hearing shall be served by any method permitted in R14-4-304, sent by personal service or by registered mail, return receipt requested, to the respondent's business address, or the statutory agent of record. The A notice of an opportunity for a hearing shall set forth that the respondent will be afforded a hearing upon request to ~~Docket docket~~ Control control of the Commission if the request is made in writing within 10 days after receipt of the notice by the respondent.
- C. When a respondent requests a hearing pursuant to a notice of an opportunity for a hearing in accordance with the provisions of this rule, the Commission shall set a date, time, and place for the hearing and shall forthwith notify the respondent. The date set for the hearing shall be within 30 days, but not earlier than 15 days after the written request for hearing has been made, unless otherwise provided by law, stipulated by the parties, or ordered by the Commission agreed to by both the Commission and the respondent.

R14-4-307. Temporary Cease-and-desist Orders

- A. When the Division determines that the public interest will be harmed by delay in issuing an order to cease-and-desist, the Division may, with the consent of the Commission, issue a temporary cease-and-desist order which will be in effect for 120 days or until vacated, modified, or made permanent in accordance with this rule, whichever comes first.
- B. ~~The Commission shall serve a temporary~~ Temporary cease-and-desist orders shall be served pursuant to ~~rule the provisions of~~ R14-4-304.
- C. The temporary cease-and-desist order shall set forth that the respondent will be afforded a hearing upon request to docket control of the Commission if the request is filed in writing within 20 days of service of the temporary cease-and-desist order. If a request for a hearing is not filed within 20 days, the Commission may, by written findings of fact and conclusions of law, vacate, modify, or make permanent the temporary cease-and-desist order.
- D. When a respondent requests a hearing in accordance with the provisions of this rule, the Commission shall set a date, time, and place for the hearing and shall forthwith notify the respondent. The date set for the hearing shall be within 15 days, but not earlier than 5 days, after the written request for hearing has been filed, unless otherwise provided by law, stipulated by the parties, or ordered by the Commission agreed to by both the Commission and respondent. The Commission may, after such hearing, by written findings of fact and conclusions of law, vacate, modify, or make permanent the temporary cease-and-desist order.

R14-4-308. Rescission and Restitution

- A. Where ~~there has been a securities have been sold in~~ violation of the Securities Act or the IM Act this Chapter, or any rule or order of the Commission, the person(s) or persons responsible for the violation may be required pursuant to the Securities Act or the IM Act A.R.S. § 44-2032(1) to make rescission and/or restitution as provided herein, in the following manner:
- B. ~~1.~~ Where a rescission offer is ordered by the Commission,
 - 1.a. The following materials must be filed with and receive prior approval from the Director before distribution to the purchasers:

Arizona Administrative Register
Notices of Exempt Rulemaking

- a.i. A written offer to repurchase stating in reasonable detail the facts out of which liability arose and, in the event of a violation of A.R.S. §§44-1991, ~~or 44-1992, or 44-3241~~, the correct, true, or omitted facts.
- b.ii. An offer to repurchase the security shall include an offer of:
- i. ~~cash~~ Cash (or if the Commission determines it is in the public interest, other property) equal to the fair market value of the consideration paid (determined as of the date such payment was originally paid by the buyer) or such lesser amount as shall be ordered by the Commission (if it determines that it is in the public interest to order such lesser amount); together with
 - ii. Such amount or rate of interest as shall be ordered by the Commission on such amount for the period from the date of purchase payment to the date of repayment; less
 - iii. The amount of any principal, interest, or other distributions received on the security for the period from the date of purchase payment to the date of repayment; such interest to be computed at the legal rate, less the amount of any income received on the security.
- c.iii. The offer to repurchase shall be accompanied by a prospectus and other documents making full written disclosure about the financial and business condition of the issuer and the financial and business risks associated with the retention of the securities, and contain any such further information as the Commission may require.
- d.iv. The offer to repurchase shall state that such offer may be accepted by the purchaser at any time within a specified period of not less than 30 days after the date of receipt thereof unless a shorter period of time is ordered by the Commission.
- 2.b. The offer and any other materials required to be presented to the purchaser shall be made within a period specified by the Commission.
- 3.e. Financial statements prepared in accordance with R14-4-120, A.R.S. § 44-3159, or other appropriate documentation as requested by the Director or the Commission, shall be provided to the Director. The financial statements or documentation shall demonstrate that the person or persons funding the rescission offer ~~has~~ have adequate funds to pay the amount ordered pursuant to subsection (B)(1)(b) to all purchasers of the securities who are eligible may choose to accept the rescission offer, together with interest as stated in subparagraph (a), subdivision (ii) above less the amount of any proceeds received directly from the issuer. The funding of the rescission offer may be provided by the seller, issuer, or other third party.
- 4.d. The Commission may order that funds be deposited in escrow as the Commission deems necessary.
- 5.e. When the rescission offer has been completed and the appropriate funds paid, the person funding the rescission offer must verify to the Director that the rescission offer was made in accordance with this rule. The verification may be performed by an independent third party, such as an accountant or escrow agent, and by providing the pertinent records documenting the rescission offer to the Director. The following information must be included unless otherwise ordered by the Commission:
- a.i. Names, addresses, and telephone numbers ~~and amount of securities held by all such securities holders of the issuer, who has~~ a right to receive the rescission offer, the amount and purchase dates of securities held by such securities holders, and the amount of principal, interest, or other distributions on all securities held by such securities holders;
 - b.ii. Names, addresses, and telephone numbers ~~and amount of securities held by all such securities holders of the issuer who did not receive the rescission offer and the reason why they did not receive the rescission offer, the amount and purchase dates of securities held by such securities holders, and the amount of principal, interest, or other distributions on all securities held by such securities holders;~~
 - c.iii. Verification of receipt of the rescission offer by all securities holders who had a right to and did receive the rescission offer;
 - d.iv. A list of securities holders who accepted the rescission offer and those who did not accept;
 - e.v. Verification of ~~full~~ payment of principal together with and interest ordered to be paid to all such securities holders who accepted the rescission offer.
- C.2. Where restitution is ordered by the Commission,
- 1.a. The amount payable as damages to each purchaser shall include the amount computed under ~~paragraph (1), subparagraph (a), subdivision (ii) of this rule, subsection (B)(1)(b)~~ less the amount of any ~~income sale proceeds~~ received on disposal of the security if it was sold at any time by the purchaser.
 - 2.b. Financial statements prepared in accordance with R14-4-120, A.R.S. § 44-3159, or other appropriate documentation as requested by the Director or the Commission, shall be provided to the Director. The financial statements or documentation shall demonstrate that the person paying restitution has adequate funds to pay all purchasers the amount computed in ~~paragraph (2), subparagraph (a); subsection (C)(1) of this rule.~~
 - 3.e. The Commission may order that funds be deposited in escrow as the Commission deems necessary.
 - 4.d. The Commission may order the respondent to provide the following information to the ~~division~~ Division:
 - a.i. Names, addresses, and telephone numbers of all securities purchasers of such securities who had a right to receive restitution under the Commission's order; amount and purchase dates of securities purchased by such purchasers; fair market value and dates of the any non-cash consideration received by respondent from each purchaser of such securities; and any payment of income principal, interest, or any other distribution on such security.
 - b.ii. Verification of ~~full~~ payment of principal together with and interest ordered to be paid to all such purchasers.