

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 2. ADMINISTRATION

CHAPTER 14. STATEWIDE COLLATERAL POOL

Editor's Note: The following two Notices of Proposed Rulemaking were exempt from Executive Order 2012-03 as issued by Governor Brewer. (See the text of the executive order on page 2815.)

[R14-161]

PREAMBLE

- | <u>1. Articles, Parts, and Sections Affected (as applicable)</u> | <u>Rulemaking Action</u> |
|--|--------------------------|
| Article 1 | New Article |
| R2-14-101 | New Section |
| R2-14-102 | New Section |
| R2-14-103 | New Section |
| R2-14-104 | New Section |
| R2-14-105 | New Section |
| R2-14-106 | New Section |
| R2-14-107 | New Section |
| R2-14-108 | New Section |
| R2-14-109 | New Section |
- 2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**
Authorizing statute: A.R.S. § 35-1202
Implementing statute: A.R.S. §§ 35-1201 through 35-1212
- 3. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the proposed rule:**
Notice of Rulemaking Docket Opening: 20 A.A.R. 2808, October 17, 2014 (*in this issue*).
- 4. The agency's contact person who can answer questions about the rulemaking:**
Name: Mark Swenson, Deputy Treasurer
Address: State Treasurer's Office
1700 W. Washington St., First Floor
Phoenix, AZ 85007
Telephone: (602) 542-7877
Fax: (602) 542-7176
E-mail: Marks@aztreasury.gov
Web site: www.aztreasury.gov
- 5. An agency's justification and reason why a rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:**
Under Laws 2013, Chapter 157, the legislature authorized a statewide collateral pool for public deposits and created the office of Statewide Collateral Pool Administrator in the State Treasurer's office to implement and monitor the statewide collateral pool. The statewide collateral pool provides an efficient, cost effective, and safe way for depository institutions to collateralize public monies. The depository institutions are able to centralize processing and man-

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aging the pledging and maintaining of collateral through the pool rather than with each depositing public entity. The depository institutions also have only to report to the Administrator rather than to each depositing public entity. Depositing public entities benefit from having the Administrator monitor collateral of public monies.

The statutes authorizing the statewide collateral pool require the Administrator to establish policies and procedures necessary to implement the pool. The Administrator has determined certain policies and procedures should be placed in rule.

This rulemaking is exempt from the rulemaking moratorium contained in Executive Order 2012-03 under paragraph (4)(a) of the Order.

6. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to 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:

The Administrator does not need to review or rely on a study for its evaluation of or justification for any rule in this rulemaking because the rules simply implement statutory requirements.

7. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

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

This rulemaking will have minimal economic impact on both eligible depositories and eligible depositors because it simply implements statutory requirements. It is statute that has the economic impact. Both eligible depositories and eligible depositors will benefit from creation of the statewide collateral pool to protect public monies while creating efficiencies in the pledging and monitoring of collateral.

9. The agency's contact person who can answer questions about the economic, small business, and consumer impact statement:

Name: Mark Swenson, Deputy Treasurer
Address: State Treasurer's Office
1700 W. Washington St., First Floor
Phoenix, AZ 85007
Telephone: (602) 542-7877
Fax: (602) 542-7176
E-mail: Marks@aztreasury.gov
Web site: www.aztreasury.gov

10. The time, place, and nature of the proceedings to make, amend, repeal, or renumber the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

An oral proceeding regarding the proposed rules will be held as follows:

Date: Tuesday, November 18, 2014
Time: 1:30 p.m.
Location: State Treasurer's Office; Large Conference Room
1700 W. Washington St.
Phoenix, AZ 85007

11. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

None

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

None of the rules requires a permit.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

There are federal laws applicable to banks and savings institutions. Eligible depositories will have to comply with the federal laws. However, the federal laws are not applicable to operation of the statewide collateral pool.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

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No analysis was submitted.

12. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:
No materials are incorporated by reference.

13. The full text of the rules follows:

TITLE 2. ADMINISTRATION

CHAPTER 14. STATEWIDE COLLATERAL POOL

ARTICLE 1. STATEWIDE COLLATERAL POOL

Section

<u>R2-14-101.</u>	<u>Definitions</u>
<u>R2-14-102.</u>	<u>Participation Mandatory</u>
<u>R2-14-103.</u>	<u>Collateral Required</u>
<u>R2-14-104.</u>	<u>Increasing, Releasing, and Substituting Eligible Collateral</u>
<u>R2-14-105.</u>	<u>Reports Required</u>
<u>R2-14-106.</u>	<u>Use of Reports</u>
<u>R2-14-107.</u>	<u>Fee Assessment</u>
<u>R2-14-108.</u>	<u>Payment of Losses</u>
<u>R2-14-109.</u>	<u>Civil Penalty for Noncompliance; Hearing</u>

ARTICLE 1. STATEWIDE COLLATERAL POOL

R2-14-101. Definitions

A. The definitions in A.R.S. § 35-1201 apply to this Chapter.

B. Additionally, in this Chapter:

1. “Collateral pool” means the method of securing repayment of uninsured balances of public deposits made with an eligible depository through the collateral pledged by the eligible depository with an eligible escrow agent.
2. “CUSIP” means Committee on Uniform Security Identification Procedures and refers to a nine character alphanumeric code that uniquely identifies a financial security.
3. “EST” means Eastern Standard Time.
4. “FDIC” means the Federal Deposit Insurance Corporation.
5. “Treasurer” means the Office of the Arizona State Treasurer.
6. “Uninsured” means public monies deposited with an eligible depository that exceed the amount insured by an instrumentality of the United States.

R2-14-102. Participation Mandatory

A. Public depositors.

1. Except as provided under A.R.S. § 35-1204(B), all public depositors shall place deposits of uninsured public monies with an eligible depository.
2. A public depositor that decides to exercise the exemption provided under A.R.S. § 35-1204(B) shall provide written notice of the decision to the Administrator.

B. Eligible depositories. Except as provided in subsections (B)(1) and (2), an eligible depository that accepts or retains public monies shall pledge required collateral to the collateral pool.

1. An eligible depository that accepts and retains only insured public monies is not required to pledge collateral to the collateral pool. However, the eligible depository shall provide a notarized statement to the Administrator that lists:
 - a. Each public depositor for which the eligible depository is retaining public monies.
 - b. The deposit balance for each public depositor, and
 - c. The total insurance available for each public depositor.
2. An eligible depository that accepts and retains all public monies in the trust department of the eligible depository and secures the public monies under 12 U.S.C. Section 92(a) is not required to pledge collateral to the collateral pool.

C. An eligible depository doing business in Arizona that does not accept or retain public monies shall attest to this fact on a notarized statement that is available from the Administrator.

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R2-14-103. Collateral Required

- A.** An eligible depository that intends to accept and retain uninsured public monies shall execute a Collateral Security Agreement with the Treasurer, using a form that is available on the web site of the Treasurer. In the agreement, the eligible depository shall pledge for the benefit of the Treasurer eligible collateral having a market value of at least 102 percent of the retained amount of uninsured public monies.
- B.** An eligible depository shall deposit all eligible collateral with a qualified escrow agent that will hold the required collateral in trust for the use and benefit of the Treasurer on behalf of the collateral pool.
- C.** An eligible depository that does not have a preferred qualified escrow agent may ask the Administrator for permission to use the Treasurer's existing custodial contracts as a qualified escrow agent.
- D.** An eligible depository that has pledged required collateral to the United States Housing and Urban Development Department is not required to pledge additional collateral to the collateral pool. However, the eligible depository shall include the HUD-related public monies in the reports required under R2-14-105.
- E.** If an eligible depository uses a security as eligible collateral, the eligible depository shall:
 - 1.** At the time the security is deposited with a qualified escrow agent, forward to the Administrator the par and market value of the security, identified by the security's CUSIP, and the source of the valuation. The Administrator shall, from time to time, test the market value of the security using an independent source; and
 - 2.** When the security matures or is called for redemption, deposit the cash received with the qualified escrow agent.

R2-14-104. Increasing, Releasing, and Substituting Eligible Collateral

- A.** If a public depositor anticipates making a late-day increase in the amount of public monies deposited with an eligible depository, the public depositor shall notify the Administrator. The Administrator shall notify the eligible depository of the anticipated deposit and require that additional eligible collateral be pledged, if needed.
- B.** If an eligible depository determines that the amount of eligible collateral deposited with a qualified escrow agent exceeds the amount required under R2-14-103(A), the eligible depository may request that the Administrator release the excess collateral. The Administrator shall approve the request as soon as the Administrator determines that the amount of collateral held by the qualified escrow agent exceeds the amount required.
- C.** Except as provided in A.R.S. § 35-1208(C), an eligible depository may make substitutions of eligible collateral deposited with a qualified escrow agent if the amount of required collateral is maintained.

R2-14-105. Reports Required

- A.** Contact information. An eligible depository shall provide the Administrator, using a form available on the Treasurer's web site, with the following:
 - 1.** Information the Administrator needs to contact the individual responsible for ensuring that the eligible depository complies with A.R.S. Title 35, Chapter 10, and this Chapter;
 - 2.** Information the Administrator needs to contact each public depositor including:
 - a.** Name and physical address of the public depositor; and
 - b.** Telephone and fax numbers and e-mail address of the individual who is to receive monthly statements from the Administrator; and
 - 3.** Updated information immediately after any of the information provided under subsection (A)(1) or (2) changes.
- B.** Daily report. An eligible depository shall provide the Administrator, using a form available on the Treasurer's web site, a summary report no later than 12:30 p.m. EST every business day. The report, which shall be transmitted electronically, shall contain the following information:
 - 1.** Name of eligible depository making the report,
 - 2.** Date of report,
 - 3.** Demand-deposit ledger balance,
 - 4.** Interest-bearing ledger balance,
 - 5.** Amount of deposits covered by the FDIC,
 - 6.** Amount of uninsured deposits,
 - 7.** Amount of required collateral,
 - 8.** CUSIPs of the collateral pledged to collateral pool,
 - 9.** Market value of collateral pledged to collateral pool,
 - 10.** Original par value of collateral pledged to collateral pool,
 - 11.** Number of demand-deposit accounts of public monies, and
 - 12.** Number of interest-bearing accounts of public monies.
- C.** Monthly report. On or before the eighth day of each month, an eligible depository shall provide the Administrator, using a form available on the Treasurer's web site, a report that contains the following information regarding each public depositor:
 - 1.** Name of public depositor,
 - 2.** Taxpayer identification of the public depositor.

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3. Name and number of the public depositor's account.
 4. Amount of demand deposit held for the public depositor.
 5. Amount of interest-bearing deposit held for the public depositor.
 6. Amount of total deposits held for the public depositor.
 7. Amount of the public depositor's deposits covered by the FDIC, and
 8. Amount of required collateral to protect the public depositor's deposits.
- D.** Detailed daily report. When the Administrator determines that additional information is needed to ensure that all public monies are protected, an eligible depository shall provide the information required under subsections (B) and (C) sorted first by public depositor and second by taxpayer identification number.
- E.** Additional reports. If requested by the Administrator:
1. An eligible depositor that is a bank shall submit to the Administrator a copy of the quarterly report of condition required by the Federal Deposit Insurance Act, 12 U.S.C. § 1817 et seq.; or
 2. An eligible depositor that is a savings institution shall submit to the Administrator a copy of the monthly and quarterly reports required to be filed with the Office of Thrift Supervision or other federal regulator.

R2-14-106. Use of Reports

- A.** If the Administrator determines after reviewing either the daily report or detailed daily report that an eligible depository has pledged insufficient collateral to the collateral pool, the Administrator shall immediately contact the eligible depository and require that additional collateral be pledged no later than 3:00 p.m. EST of the same day.
- B.** An eligible depository that is contacted under subsection (A) shall send a report to the Administrator identifying the additional collateral pledged by CUSIP, par value, and market value.
- C.** If an eligible depository fails to comply timely with subsection (B), the Administrator shall take one or more of the following actions:
1. Provide written notice to the eligible depository of intent to assess a daily civil penalty of \$250 until there is compliance.
 2. Provide electronic notice of the noncompliance to the:
 - a. Superintendent of the Department of Financial Institutions, and
 - b. Public depositories that have deposits with the eligible depository, and
 3. Post notice of the noncompliance on the Treasurer's web site.
- D.** The Administrator shall forward an electronic copy of the monthly report to each public depositor within five days after receiving the report. Before the end of the month, each public depositor shall review the monthly report and inform the Administrator of any discrepancy between the information in the monthly report and the statement provided directly to the public depositor by the eligible depository.

R2-14-107. Fee Assessment

- A.** Under A.R.S. § 35-1212, the collateral pool is required to be self-supporting. The Administrator is authorized to assess fair and equitable fees from eligible depositories.
- B.** Annual assessment. The Administrator shall annually assess an eligible depository required under R2-14-102(B) to pledge eligible collateral to the collateral pool an amount that reflects the eligible depository's daily average portion of uninsured public monies on deposit.
1. The Administrator shall determine the total amount to be assessed based on expenses incurred to administer and enforce the collateral pool during a calendar year.
 2. The Administrator shall inform each eligible depository of the depository's assessed amount by January 15 of each year.
 3. An eligible depository shall pay the assessed amount by February 15 of each year.
 4. If an eligible depository enters or leaves the collateral pool during a calendar year, the Administrator shall make or refund a partial assessment.
- C.** Additional assessment. When an eligible depository fails to comply fully with A.R.S. Title 35, Chapter 10 or this Chapter, the Administrator incurs extra expenses to administer and enforce the collateral pool. When this happens, the Administrator shall assess an additional fee from the non-complying eligible depository equal to the amount of extra expense incurred by the Administrator.

R2-14-108. Payment of Losses

- A.** The Administrator shall find that an eligible depository is in default if the eligible depository:
1. Fails to return to a public depositor public monies including earned interest;
 2. Is subject to a court order or formal action by a supervisory authority that has the effect of restraining the eligible depository from making payments of deposit liabilities; or
 3. Is subject to the appointment of a receiver.
- B.** If the Administrator determines that an eligible depository is in default or insolvent, the Administrator shall provide notice of the default or insolvency to all public depositories that have deposited public monies with the defaulting or insolvent eli-

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gible depository.

- C. If the Administrator determines that an eligible depository is in default or insolvent, the Administrator shall revoke authorization for the eligible depository to make substitutions of eligible collateral.
- D. If the Administrator determines that an eligible depository is in default or insolvent, the Administrator, in cooperation with the Arizona Department of Financial Institutions and the receiver appointed for the eligible depository, if any, shall:
 - 1. If the receiver has found a new eligible depository that agrees to accept the public monies deposited with the defaulting or insolvent eligible depository:
 - a. Transfer the required collateral from the defaulting or insolvent eligible depository to the new eligible depository, and
 - b. Provide notice of the transfer to the public depositors; or
 - 2. If a new eligible depository is not found, take possession of the required collateral and do one or both of the following:
 - a. Liquidate the required collateral in an orderly fashion and distribute the proceeds on a pro-rata basis to the public depositors; or
 - b. Upon request from a public depositor and if it is possible to segregate and divide the required collateral, provide a pro-rata share of the segregated and divided collateral to the public depositor making the request.

R2-14-109. Civil Penalty for Noncompliance: Hearing

- A. Under A.R.S. § 35-1211, the Administrator may assess a civil penalty against an eligible depository for failing to:
 - 1. Maintain required collateral, or
 - 2. File a report required under R2-14-105.
- B. If the Administrator determines that an eligible depository has failed to maintain required collateral or file a required report, the Administrator shall serve written notice by certified mail to the eligible depository of intent to assess a civil penalty. The Administrator shall ensure that the notice provides the information required under A.R.S. § 41-1092.03(A).
- C. An eligible depository that receives notice under subsection (B) may make a written request for a hearing. The eligible depository shall make the request for hearing within 30 days after receipt of the notice under subsection (B).
- D. At least 20 days before a scheduled hearing, an eligible depository may make a written request for an informal settlement conference.
- E. The Administrator shall ensure that hearings are conducted using the procedures in A.R.S. Title 41, Chapter 6, Article 10 and rules of the Office of Administrative Hearings.