

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. Due to time restraints, the Secretary of State's Office will no longer edit the text of proposed rules. We will continue to make numbering and labeling changes as necessary.

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 adoption, amendment, or repeal of any rule. A.R.S. §§ 41-1013 and 41-1022.

NOTICE OF PROPOSED RULEMAKING

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 4. BANKING DEPARTMENT

PREAMBLE

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|------------------------------------|---------------------------------|
| 1. <u>Sections Affected</u> | <u>Rulemaking Action</u> |
| R20-4-207 | Amend |
| R20-4-209 | Repeal |
- 2. The specific statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. § 6-123(2)
Implementing statutes: A.R.S. §§ 6-181(1), 6-181(4), 6-181(7), 6-181(9), 6-189, and 6-190(D)
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**
Notice of Rulemaking Docket Opening: 6 A.A.R. 1811, May 19, 2000
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: John P. Hudock
Address: 2910 North 44th Street, Suite 310
Phoenix, Arizona 85018
Telephone: (602) 255-4421, Ext. 167
Fax: (602) 381-1225
E-Mail: jhudock@azbanking.com
- 5. An explanation of the rule, including the agency's reasons for initiating the rule:**
These rules govern the organization and regulation of state-chartered banks. Specifically, R20-4-207 describes the process for obtaining the Superintendent's approval for a licensee's issuance of capital obligations. R20-4-209 requires licensees to give notice of the intention to permanently close a banking office.
The Department proposes to amend R20-4-207 to reconcile it with federal regulations found at 12 CFR Part 325, Appendix A. In this same rulemaking proceeding, the Department proposes to repeal R20-4-209 as unnecessary.
- 6. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study, and other supporting material:**
The Department does not propose to rely on any study as an evaluator or justification for the proposed rule.
- 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:

A. The Banking Department

The revision of R20-4-207 will have no economic effect on the Department. The repeal of R20-4-209 will have a marginally beneficial effect on the Department because it will stop the flow of paper work submitted to comply with the existing rule.

B. Other Public Agencies

The state will incur normal publishing costs incident to rulemaking.

C. Private Persons and Businesses Directly Affected

Costs of services will not increase to any measurable degree. Nor should these revisions increase any licensee's cost of doing business in compliance with these rules.

D. Consumers

No measurable effect on consumers is expected.

E. Private and Public Employment

The Department expects no measurable effect on private and public employment.

F. State Revenues

This rulemaking will not change state revenues.

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:

Name: John P. Hudock
Address: 2910 North 44th Street, Suite 310
Phoenix, Arizona 85018
Telephone: (602) 255-4421, Ext. 167
Fax: (602) 381-1225
E-Mail: jhudock@azbanking.com

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:

No oral proceedings are scheduled. The Department will schedule an oral proceeding on the proposed rule if it receives a written request for a proceeding within 30 days after the publication date of this notice, under the provisions of A.R.S. § 41-1023(C). Send requests to the Department personnel listed in this preamble's questions 4 and 9. The Department invites and will accept written comments on the proposed rule or the preliminary economic, small business, and consumer impact statement. Submit comments during regular business hours, at the address listed in this preamble's question 9, until the close of the record for this proposed rulemaking. The record will close on the 31st day following publication of this notice, unless the Department schedules an oral proceeding.

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:

None

13. The full text of the rules follows:

Arizona Administrative Register
Notices of Proposed Rulemaking

TITLE 20. COMMERCE, BANKING AND INSURANCE

CHAPTER 4. BANKING DEPARTMENT

ARTICLE 2. BANK ORGANIZATION AND REGULATION

Sections

R20-4-207. Capital Obligations —A.R.S. § 6-189

R20-4-209. Notice of Permanent Closing of Banking Office—A.R.S. § 6-190 (D) Repealed

ARTICLE 2. BANK ORGANIZATION AND REGULATION

R20-4-207. Capital Obligations —A.R.S. § 6-189

A. ~~An applicant for the Superintendent's order of approval to issue capital obligations shall submit the following documents to the Superintendent, and shall then await the Superintendent's order before issuing any capital obligation. The required documents are: are required to be submitted prior to approval by the superintendent of the issuance of capital obligations:~~

1. ~~A certified~~ Certified copy of the resolution adopted by the Board of Directors, ~~or a certified copy of the unanimous written consent of the Board of Directors,~~ authorizing the sale of capital obligations; ;
2. ~~A copy~~ Copy of the ~~agreement underlying the capital obligation; agreement.~~
3. ~~A copy~~ Copy of the ~~note or debenture intended to represent the capital obligation; and form.~~
4. ~~A copy of the prospectus~~ Prospectus, if any, ~~proposed for use to be used in the capital obligations' sale.~~

B. ~~Each document evidencing a capital obligation~~ Capital obligations shall:

1. Bear on its face, in bold face type, the following: **This obligation is not a deposit and is not insured by the Federal Deposit Insurance Corporation.**
2. Have maturity provisions that either:
 - a. Give the obligation a maturity of at least 5 years, or
 - b. In the case of an obligation or issue that provides for scheduled repayments of principal, give an average maturity of at least 5 years. The restriction on maturity stated in this subsection original maturity of seven years or more, provided that this restriction on maturity shall not apply to any obligation that which otherwise meets all the requirements of this rule if and with respect to which the Superintendent superintendent has determined that exigent circumstances require the issuance of the such obligation without regard to any the restriction on maturity. The provisions of this subsection shall not apply to mandatory convertible debt obligations or issues.
3. ~~Have a principal amount of at least \$500.00.~~
- 3.4. ~~State expressly on its face that the obligation:~~
 - a. Is subordinated and junior in right of payment to the issuing bank's obligations to its depositors and to the bank's other obligations to its general and secured creditors.
 - b. Is ineligible as collateral for a loan by the issuing bank, except as provided in A.R.S. § 6-354.
4. Be unsecured.
5. State expressly on its face that the issuing bank may not retire any part of its obligation without prior written consent of the Superintendent and the Federal Deposit Insurance Corporation.
- 6.7. ~~Include, if the obligation is issued to a depository institution, a specific waiver of the right of offset by the lending depository institution that capital obligations of the bank are an unsecured indebtedness of the bank subordinate to the claims of depositors and all other creditors of the bank regardless of whether the claims arose before or after the issuance of the note or debenture representing the capital obligation.~~
- 7.5. ~~State that, in the event of liquidation, all depositors and other creditors of the bank are to be paid in full before any payment of principal or interest is made on capital obligations.~~
6. ~~State that it is ineligible as collateral for a loan from the issuing bank except as provided in A.R.S. § 6-354.~~

C. No payment shall be made under an optional right of payment reserved to the bank without the separate authorization of the Superintendent. ~~The Superintendent~~ superintendent which may grant ~~be granted~~ that authority in the ~~his~~ initial order of approval or by later ~~subsequent~~ order.

R20-4-209. Notice of Permanent Closing of Banking Office—A.R.S. § 6-190 (D) Repealed

~~A bank may permanently close less than all of its banking office on giving notice of such closing by giving written notice of such losing to the superintendent, and such closing shall terminate the authority to maintain any office which is closed.~~