

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of New)	NOTICE OF PROPOSED
Rules I through XXIII pertaining to)	ADOPTION, AMENDMENT, AND
banking, the amendment of ARM)	REPEAL
2.59.1101 through 2.59.1103,)	
pertaining to bank branches, and the)	NO PUBLIC HEARING
repeal of ARM 2.59.108, pertaining to)	CONTEMPLATED
limitations on loans, and 2.59.901,)	
pertaining to bank branch relocations)	

TO: All Concerned Persons

1. On September 12, 2020, the Department of Administration proposes to adopt, amend, and repeal the above-stated rules.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration no later than 5:00 p.m. on August 5, 2020, to advise us of the nature of the accommodation that you need. Please contact Heather Hardman, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2922; TDD (406) 841-2974; facsimile (406) 841-2930; or e-mail to banking@mt.gov.

3. GENERAL REASONABLE NECESSITY STATEMENT: The 2019 Montana Legislature enacted Chapter 75, Laws of 2019 (Senate Bill 58), an act generally revising the Montana Bank Act. Senate Bill 58 was signed by the Governor on March 20, 2019, and became effective October 1, 2019. The department determined it is reasonably necessary to adopt New Rules I through VI, IX through XI, and XIII and to amend and repeal certain rules to implement the legislation.

As part of the periodic review of its administrative rules, the department determined adoption of additional rules and amendment of certain rules were necessary to describe current banking practices and procedures used by the department. Accordingly, the department has determined that it is reasonably necessary to adopt New Rules VII and VIII, XII, and XIV through XVI and to amend ARM 2.59.1101 through 2.59.1103. Some of the proposed amendments are technical in nature, such as deleting unnecessary or redundant sections, updating and improving grammar and language choices, and amending rules for accuracy, consistency, simplicity, better organization, and ease of use.

New Rules XVII through XXII are a revision of the current limitations on loans rule found in ARM 2.59.108. The meaning of the current rule is not being changed. The rule is being redrafted to improve readability and aid in comprehension. The department routinely receives more inquiries about the meaning and application of the legal lending limit than any other rule it maintains. Bankers and regulators alike

struggle to decipher the meaning of the existing rule. Therefore, the department is proposing to repeal ARM 2.59.108 and separate the sections and subsections of the existing rule into several distinct new rules, each dealing with a portion of the subject matter regarding limitations on loans that was previously part of ARM 2.59.108. Where additional specific bases for a proposed action exist, the department will identify those reasons immediately following that rule.

4. The rules proposed to be adopted provide as follows:

NEW RULE I DEFINITIONS For purposes of this subchapter, the following definitions apply:

(1) "Consolidate" means a combination of two or more office locations within the same immediate neighborhood that does not substantially affect the nature of the business or customers served. Thus, for example, a consolidation of two branches on the same block following a merger would not constitute a branch closing. Banks that are in doubt about whether a consolidation or a closing has occurred should consult the department. A consolidation is considered a relocation for purposes of [New Rules II and VI].

(2) "Customer" means a person who opened an account at the branch location in question.

(3) "Relocate" means a movement within the same immediate neighborhood that does not substantially affect the nature of the business or customers served. Generally, relocations involve movement over short distances. For example, moves across the street, around the corner, or within two blocks are relocations. Moves of less than 1,000 feet are relocations. In less densely populated areas of the state or where neighborhoods extend farther, a longer move that does not substantially affect the nature of the business or the customers served by the office location may also be a relocation. Banks that are in doubt about whether a relocation or a closing has occurred should consult the department.

AUTH: 32-1-211, 32-1-218, 32-1-222, 32-1-372, MCA

IMP: 32-1-211, 32-1-218, 32-1-222, 32-1-372, MCA

REASON: A loan production office or a branch that is being consolidated with another location or relocated to a nearby area should not have to go through the process of closing one location and opening another one. The concepts of consolidation and relocation have been developed by the federal banking agencies to allow an institution to either combine locations that are close to one another or move a location a relatively short distance.

Consistent with FDIC regulations, these definitions have been developed to allow flexibility, while recognizing that the essence of the definition is whether the location serves the same immediate neighborhood. In Froid, a move of 1500 feet may not be a relocation, whereas in Billings it may be, depending on whether the location continues to serve the same immediate neighborhood after the move.

The definition of customer is needed to allow institutions to determine who should receive notices of closures or relocations.

NEW RULE II LOAN PRODUCTION OFFICE (1) A bank that desires to establish a loan production office in this state shall provide written notice to the department of its intent to do so at least thirty days prior to opening the loan production office using the Notice of Intent to Establish a Loan Production Office form dated June 29, 2020, located at www.banking.mt.gov.

(2) A bank organized under the laws of Montana that intends to open a loan production office in another state shall submit copies of all required regulatory filings or notices required by the host state and federal agencies along with the items required in the Notice of Intent to Establish a Loan Production Office form, if they are not already included in the form, to the department.

(3) A bank that desires to relocate or close a loan production office temporarily or permanently shall give the notice to its customers using the customer Notice of Relocation form dated June 29, 2020, or customer Notice of Closure form dated June 29, 2020, located at www.banking.mt.gov.

(4) The relocation or closure form shall be provided to customers of the loan production office by posting it at the loan production office at least fifteen days before the relocation or closure of the office. The relocation or closure form shall be provided to the department at the same time.

(5) The department reserves the right to request additional information regarding opening, closing, or relocation of a loan production office.

(6) If the loan production office will be using an assumed name, compliance with 32-1-402, MCA, is required.

(7) Each loan production office shall be subject to examination and supervision by the department in the same manner and to the same extent as the bank.

(8) Each loan production office operating in Montana as of the effective date of this rule, shall provide written notice to the department containing the information required in (1) on or before October 1, 2020.

AUTH: 32-1-211, 32-1-222, MCA

IMP: 32-1-211, 32-1-222, 32-1-561, 32-1-562, 32-1-563, 32-1-564, 32-1-565, MCA

REASON: SB 58 allowed the department to require notice of the establishment, relocation, and closure of loan production offices. The department has proposed New Rule II to implement these requirements. The notices will be available on the department's website to allow banks immediate access to the forms and the procedures involving loan production offices. The Notice of Intent to Establish a Loan Production Office form dated June 29, 2020, will be used to obtain the information necessary for the department to determine which bank is opening a loan production office, where the office will be located, who will be running the office, when it will open, and what activities will be conducted there. This is the rudimentary information needed by the department to monitor banking activities in this state.

The rule also provides for online forms for the relocation of a loan production office and temporary or permanent closure of a loan production office. This allows banks to use standardized forms and processes which are immediately available online to notify customers, and the department, of closures or relocations of loan production offices. One purpose of the notice is to inform customers when a loan production office is being relocated. The notice may also be used if the loan production office is being closed temporarily or permanently to notify customers of the date of closure and reason for the closure.

New Rule II also addresses permanent or temporary non-emergency closures for loan production offices. Emergency closures are governed by 32-1-561 through 32-1-565, MCA.

The rule allows the department to request additional information as needed regarding opening, closing, or relocating loan production offices.

The rule makes clear that if an assumed name is used for the loan production office, 32-1-402, MCA, applies.

The rule provides that loan production offices are subject to examination by the department in the same manner and to the same extent as the bank. This proposal ensures consistency in examinations and removes any suggestion that a loan production office is somehow disassociated from the bank that operates it.

Section (8) allows the department to have an accurate idea of the loan production offices operating currently in Montana, which is necessary for the department to perform its regulatory functions. Therefore, the department is requiring notice from all currently existing loan production offices in this state.

NEW RULE III BRANCH BANKS (1) A bank organized under the laws of this state that is a qualifying institution, as set forth in (2), may establish a branch in Montana upon summary notice and approval by the department. The notice shall be given using the Request for Summary Approval of Branch form dated June 29, 2020, which is located at www.banking.mt.gov.

(2) In order to qualify for summary notice, the bank shall:

(a) have received its bank charter at least five years prior to making the request;

(b) be well-capitalized as defined in 12 CFR Part 324 by the Federal Deposit Insurance Corporation, if the bank is a nonmember bank; or as defined in 12 CFR 208.43(b)(1) by the Federal Reserve Board of Governors, if the bank is a member bank of the Federal Reserve System;

(c) have received a CAMELS composite rating of one or two on its most recent state or federal safety and soundness examination;

(d) have received a management rating of one or two on its most recent state or federal regulatory examination; and

(e) not be a party to any formal or informal enforcement action initiated by a state or federal regulatory agency.

(3) The bank shall certify that it is a qualifying institution as of the date of the request.

(4) A bank that is not a qualifying institution as of the date of the request shall comply with ARM 2.59.1101 and 2.59.1103.

(5) The department shall approve or deny a summary notice and application within 15 business days of receipt of a complete notice and application.

AUTH: 32-1-211, 32-1-218, 32-1-372, MCA

IMP: 32-1-211, 32-1-218, 32-1-372, MCA

REASON: SB 58 removed the state bank board from the branch approval process to streamline the branching process. In the past, branching was highly controversial and hotly contested. It no longer is. This is largely due to the development and widespread adoption of electronic banking platforms. In this rule, the department allows institutions that do not present regulatory concerns a streamlined process to establish a branch. The criteria that an institution must meet to avail itself of the streamlined branching process are located in (2). A bank that qualifies for the summary notice procedures in (2) is in sufficient condition to not present regulatory concerns regarding branching. The notice gives the department the information it needs to process the request to branch. Upon receipt of the notice, the department can determine if a bank should be allowed to branch as requested.

However, the department maintains its ability to supervise institutions that may seek to branch while there are supervisory concerns at the institution. In those instances, the institution must comply with the full application, notice, and comment requirements of the current rules.

Given the streamlined approval process described in this rule for qualifying institutions, it is appropriate for the department to approve or deny a summary notice and application within 15 business days of receipt of a complete notice and application.

NEW RULE IV MONTANA BANKS BRANCHING OUTSIDE MONTANA

(1) In order for a bank organized under the laws of this state to request approval for a branch outside of Montana, the bank must submit copies of all required regulatory filings or notices required by the host state and federal agencies and comply with [New Rule III] and the branching requirements of the state into which it seeks to branch.

AUTH: 32-1-211, 32-1-218, 32-1-372, MCA

IMP: 32-1-211, 32-1-218, 32-1-372, MCA

REASON: A bank organized in this state that seeks to branch into another state must comply with the branching laws and regulations of both Montana and the state into which it seeks to branch. The Dodd-Frank Wall Street Reform and Consumer

Protection Act of 2010 authorized banks to open an initial branch in a host state by establishing a de novo branch at any location at which a bank chartered by the host state could establish a branch, and upon approval of the home state and appropriate federal regulator. New Rule IV sets forth the department's process to allow banks organized in Montana to branch into another state.

NEW RULE V BANKS ORGANIZED OUTSIDE OF MONTANA BRANCHING INTO MONTANA (1) Banks organized under the laws of a state other than Montana or a national bank must submit copies of all required regulatory filings or notices required by the home state and federal agencies and comply with [New Rule III] in order to branch into Montana.

AUTH: 32-1-211, 32-1-218, 32-1-372, MCA
IMP: 32-1-211, 32-1-218, 32-1-372, MCA

REASON: Pursuant to 32-1-372, MCA, a bank organized under the laws of a state other than Montana that seeks to branch into Montana must comply with the branching laws and rules of Montana and get the approval of its organizing state and the appropriate federal regulator. The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 authorized banks to open an initial branch in a host state by establishing a de novo branch at any location at which a bank chartered by the host state could establish a branch. New Rule V sets forth the process by which that can occur.

NEW RULE VI CLOSING OR RELOCATING A BRANCH BANK (1) A bank that desires to relocate or close a branch temporarily or permanently shall give the appropriate notice to its customers using the customer Notice of Relocation form dated June 29, 2020 or customer Notice of Closure form dated June 29, 2020. The forms are located at www.banking.mt.gov.

(2) The relocation or closure form shall be provided to customers of the branch by posting it at the branch at least thirty days before the relocation or closure of the branch. The relocation or closure form shall be provided to the department at the same time. The bank shall also notify its customers at least thirty days before the relocation or closure, by any effective method.

(3) The department reserves the right to request additional information regarding closing or relocation of a branch.

AUTH: 32-1-211, 32-1-218, 32-1-372, MCA
IMP: 32-1-211, 32-1-218, 32-1-372, MCA

REASON: SB 58 amended 32-1-372, MCA, to require that a bank notify its customers and the department of any closure or relocation of a bank branch. This rule provides the process for that notification as well as the form to be used to provide the notice to bank customers and the department. The form is located on the department website for ease of use.

NEW RULE VII TEMPORARY EMERGENCY CLOSURE OF BRANCH

(1) A bank that closes a branch under the authority of 32-1-563(1), MCA, for 48 hours or less shall notify the department using the Temporary Emergency Branch Closure form dated April 10, 2019, located at www.banking.mt.gov.

AUTH: 32-1-211, 32-1-218, MCA

IMP: 32-1-211, 32-1-218, 32-1-561, 32-1-562, 32-1-563, 32-1-564, 32-1-565, MCA

REASON: Banks may have to close branches for a short period of time due to an emergency. Some examples of this are: weather events that make travel so hazardous employees and customers cannot access the branch for a short time, flooding which can be remediated in 48 hours or less, or circumstances that preclude safe travel. Under these conditions, 32-1-563, MCA, allows the officers of the bank the authority to close a branch for up to 48 consecutive hours, without requesting the approval of department. However, the bank must provide notice of the closure to the department as promptly as possible. The temporary emergency closure form facilitates notification. It is provided on the department's website to allow banks to quickly access and submit the form.

NEW RULE VIII EMERGENCY CLOSURE OF BRANCH (1) A bank that closes a branch under the authority of 32-1-563(1), MCA, for more than 48 hours shall notify the department using the Emergency Branch Closure form dated April 17, 2019, located at www.banking.mt.gov.

AUTH: 32-1-211, 32-1-218, MCA

IMP: 32-1-211, 32-1-218, 32-1-561, 32-1-562, 32-1-563, 32-1-564, 32-1-565, MCA

REASON: A bank branch that closes for more than 48 consecutive hours on an emergency basis as set forth in 32-1-563, MCA, must notify the department of the closure and request approval to stay closed for longer than 48 consecutive hours. Examples of such events include: flooding that damages all the wiring and computers of the branch so badly it had to be closed for a complete remodel and fires, earthquakes, and other casualty events that severely damage the bank branch. The department created a form to allow the bank to notify the department of the circumstances of the closure and to request approval to stay closed until the emergency abates. The form is located on the department's website to allow banks to quickly access and submit the form.

NEW RULE IX CHANGE IN CONTROL (1) An applicant filing under 32-1-378(1)(b), MCA, shall use the Application for Change in Control form dated June 29, 2020, which is located at www.banking.mt.gov.

(2) An applicant or other person subject to this rule shall notify the department immediately of any material changes in a notice or application submitted to the department, including changes in financial or other conditions.

(3) The department may require a person who is obligated to file an application under 32-1-378, MCA, to appoint a registered agent in this state for

service of process upon the filing of such notice or as a condition to the acceptance of such application for review.

AUTH: 32-1-211, 32-1-378, MCA

IMP: 32-1-211, 32-1-378, MCA

REASON: SB 58 adopted a change in control provision in the Montana Bank Act. Section 32-1-378(1)(b), MCA, requires the department to develop a form for an Application for Change in Control. That form has been developed using the requirements of 32-1-378, MCA. It is available on the department's website to allow banks immediate access to the form. The applicant or other person subject to the rule should notify the department immediately if any of the information on a submitted application changes, so that the department has current information on which to base its decision. It may be necessary for the department to require a person to appoint a registered agent in Montana for service of process if that person is not located in this state to allow the department to have a registered agent to serve in the event of litigation involving the change in control.

NEW RULE X REPORT OF DECLARATION AND PAYMENT OF DIVIDEND

(1) A bank that declares a dividend shall use the Report of Declaration and Payment of Dividend form dated June 29, 2020, which is located at www.banking.mt.gov to report to the department.

AUTH: 32-1-211, 32-1-232, MCA

IMP: 32-1-211, 32-1-232, MCA

REASON: SB 58 amended the report of declaration of dividend statute to allow banks 30 days, instead of 10 days, to report the declaration of a dividend to the department. The department has developed a form located on its website that complies with 32-1-232, MCA, and allows banks to make this report to the department.

NEW RULE XI CONFLICTS OF INTEREST For purposes of 32-1-212, MCA, the following definitions apply:

(1) "Interested in" means the commissioner or deputy commissioner:

(a) is an officer, director, or employee of a supervised entity or an individual or person owning or controlling a supervised entity;

(b) owns or deals in, directly or indirectly, the shares or obligations of a supervised entity or a person that owns or controls the supervised entity;

(c) receives, directly or indirectly, any salary, fee, or compensation from a supervised entity or any officer, director, or employee of a supervised entity; or

(d) is married to an individual who is employed by a supervised entity.

(2) "Supervised entity" means any entity chartered or supervised by the department.

(3) An investment in a mutual fund, even a proprietary mutual fund, serviced or advised by a supervised entity, does not constitute having an interest in the supervised entity.

(4) Any indebtedness incurred under 32-1-212, MCA, shall be disclosed in writing annually to the commissioner. The commissioner shall disclose any indebtedness incurred under 32-1-212, MCA, in writing annually to the director of the department.

(5) Any employee of the department who cannot timely pay any sum due to a supervised entity must immediately disclose that fact to the commissioner. If the commissioner cannot timely pay any sum due to a supervised entity, the commissioner must immediately disclose that fact to the director of the department.

AUTH: 32-1-211, 32-1-212, MCA

IMP: 32-1-211, 32-1-212, MCA

REASON: SB 58 amended 32-1-212, MCA, to provide that the commissioner or deputy commissioner may not be interested in any entity chartered or supervised by the department. This rule defines what it means to be interested in a supervised entity and what is not an interest in a supervised entity.

The rule also requires all employees of the department to annually disclose to the commissioner any indebtedness that they owe to any supervised entity. This allows the department to take measures to ensure the examiner will not be involved in any examination of an institution to which that examiner owes money. The rule also requires any employee who cannot repay a debt when due to immediately notify the commissioner so that measures can be taken to ensure that employee has no contact with the entity in question. Likewise, if the commissioner cannot repay a debt when due to immediately notify the director of the department so that measures can be taken to ensure that the commissioner has no contact with the entity in question.

NEW RULE XII OATHS OF DIRECTORS (1) Banks shall use the Oath of Directors form dated June 29, 2020, which is located on the website at www.banking.mt.gov for oaths of directors.

(2) If a new director takes office at a time other than at the annual meeting, only the new director(s) shall sign the oath of directors which shall be promptly submitted to the department.

AUTH: 32-1-211, 32-1-322, MCA

IMP: 32-1-211, 32-1-322, MCA

REASON: Section 32-1-322, MCA, requires that every director take and subscribe an oath that the director will diligently and honestly perform the director's duty in the office and the director will not knowingly violate or permit a violation of any of the provisions of the Montana Bank Act. In the case of a director who, for whatever reason, leaves the position at a time other than at the annual meeting, the bylaws provide that the board can fill the position until the next annual meeting. If this occurs, only the new director needs to sign the oath of directors which shall be promptly submitted to the department. The entire board does not need to resign the oath of directors form on the addition of interim members.

NEW RULE XIII CONVERSION OF A NATIONAL BANK TO A STATE BANK

(1) Upon conversion:

(a) the resulting state bank succeeds, without other transfer, to all the rights and property of the converted bank and is subject to all the debts and liabilities of the converted bank in the same manner as if the resulting state bank itself had incurred them;

(b) all rights of creditors of the converted bank and all liens upon the converted bank's property are unimpaired by the transfer, provided that the liens are limited to the affected property immediately prior to the time when the conversion became effective;

(c) title to all real, personal, and mixed property owned by the converted bank is vested in the resulting state bank without reversion or impairment and without the necessity of any instrument of transfer;

(d) the resulting state bank has all the liabilities, duties, and obligations of the converted bank, including obligations as fiduciary, personal representative, administrator, trustee, or guardian; and

(e) any pending action or other judicial proceeding to which the converted bank was a party may continue to be prosecuted to final judgment, order, or decree as if the conversion had not occurred, or the resulting bank may be substituted as a party to the action or proceeding.

(2) Upon conversion, a resulting bank that is organized under the laws of this state:

(a) shall designate and operate a location of the converted bank as its main banking house; and

(b) may maintain the branch banks and other offices previously maintained by the converted bank.

AUTH: 32-1-211, 32-1-374, MCA

IMP: 32-1-211, 32-1-374, MCA

REASON: SB 58 amended 32-1-374, MCA, to clarify that a national bank converting to a state bank does not dissolve and reconstitute as a state charter. This rule is necessary to elaborate on the conversion process and make clear the types of rights, duties, and obligations that transfer to the resulting state bank. It also makes clear that the converted bank may designate a location as its main banking house and maintain any other existing offices and branches as existed prior to conversion.

NEW RULE XIV FORM TO REPORT DIRECTORS AND OFFICERS

(1) Banks shall use the List of Officers and Directors form dated June 29, 2020, which is located on the department's website at www.banking.mt.gov to report the directors and officers elected at the annual meeting and the board meeting to the department. The report shall be submitted to the department within thirty days of the date of the last meeting at which an election of officers or directors was held.

AUTH: 32-1-211, 32-1-218, MCA

IMP: 32-1-211, 32-1-218, 32-1-322, 32-1-325, MCA

REASON: Section 32-1-322, MCA, requires the board of directors to be elected at the annual meeting of the stockholders. For the department to ensure that the residency and other requirements of 32-1-322, MCA, are met, banks must report their directors to the department. Section 32-1-325, MCA, requires the board to elect the officers of a bank at one of its meetings. For the department to ensure that this has been properly done, banks must report their officers to the department. The reports are combined into one form which is located on the website for ease of use. The report should be filed within thirty days after whichever meeting is later.

NEW RULE XV FOREIGN FIDUCIARY TRUST COMPANY (1) A bank that seeks to act as a fiduciary foreign trust company shall provide a letter from the chartering authority in the state in which the foreign trust company maintains its principal office stating that the foreign trust company is in good standing in the chartering state and that banking or trust associations or corporations organized under the laws of this state or national banking associations that maintain their principal offices in this state are permitted to act as trustees, guardians, or conservators in the state in which the foreign trust company maintains its principal office. If there are any limitations on the ability of the foreign trust company to solicit or do business in the state of its principal office, the letter shall set forth any limitations in detail.

AUTH: 32-1-1007, MCA

IMP: 32-1-1002, 32-1-1007, MCA

REASON: Section 32-1-1002, MCA, provides, "[a] foreign trust company may accept appointments in this state if banking or trust associations or corporations organized under the laws of this state or national banking associations that maintain their principal offices in this state are permitted to act as trustees, guardians, or conservators in the state in which the foreign trust company maintains its principal office." This rule makes clear that the chartering entity in the state in which the foreign trust company maintains its principal office should make this representation by letter to the department.

The 1993 statement of intent makes clear that the 1993 Legislature intended that the rules allow a foreign trust company to establish branches or offices of any sort in Montana or to solicit business in Montana only if reciprocating states generally permit such solicitation. The rule makes clear that any limitations must be set forth in detail by the home state of the foreign trust company.

NEW RULE XVI PARITY WITH NATIONAL BANKS (1) A bank that seeks to use 32-1-362, MCA, in order to engage in any activity or business in which the bank could engage if it were operating as a national bank shall request approval from the department in writing, preferably by electronic communication sent to banking@mt.gov.

(2) The request for approval shall include:

- (a) the power or activity the bank seeks to engage in;
- (b) a citation to the federal law, rule, or interpretive ruling that clearly authorizes national banks to engage in that activity; and
- (c) a description of all the relevant details of the proposed activity or business that will allow the department to decide on the request.

AUTH: 32-1-211, 32-1-362, MCA

IMP: 32-1-211, 32-1-362, MCA

REASON: Section 32-1-362, MCA, allows a state-chartered bank to engage in any activity or business that a national bank could engage in if that power or activity is not expressly limited or prohibited by state law. This is commonly known as a "parity" or "wildcard" statute. This rule establishes a procedure for state-chartered banks to make application for approval to the department to use these powers. The department prefers all requests for approval be sent by electronic means, especially during the COVID-19 pandemic taking place at the time of this rulemaking. The rule sets forth the information the department needs to process the request.

NEW RULE XVII DEFINITIONS For purposes of [New Rule XVIII through XXIII], the following definitions apply:

- (1) "Commitment to lend or extend credit" includes, but is not limited to:
 - (a) undisbursed portions of operating, construction or other lines of credit, up to limits established by a written agreement between the lender and the borrower;
 - (b) undisbursed portions of credit lines established to cover overdrafts;
 - (c) undisbursed portions of credit card plans; and
 - (d) standby letters of credit.
- (2) "Loan or extension of credit" includes, but is not limited to:
 - (a) direct loans, whether on the bank's books or charged off the bank's books, subject to the exclusions in [New Rule XXII].
 - (b) loans, extensions of credit, or participation in loans or extensions of credit sold with recourse to or guaranteed by the bank;
 - (c) letters of credit, other than standby letters of credit;
 - (d) overdrafts, excluding intra-day overdrafts for which the bank receives payment prior to its close of business; and
 - (e) any credit exposure of a bank to a counterparty arising from a derivative transaction or a securities financing transaction as defined in ARM 2.59.125.
- (3) "Person" means an individual, a corporation, a government, governmental subdivision or agency, a business trust, an estate, a trust, a partnership or association, a limited liability company, two or more persons having a joint or common interest, or any other legal or commercial entity.

AUTH: 32-1-211, 32-1-432, MCA

IMP: 32-1-211, 32-1-432, MCA

REASON: As described in the General Reasonable Necessity Statement, New Rules XVII through XXII are intended to replace the current limitations on loans rule. The meaning of the current rule is not being changed. New Rule XVII defines key

terms relevant to limitations on loans and the requirements set forth in New Rules XVIII through XXIII.

NEW RULE XVIII LEGAL LENDING LIMIT (1) If no direct benefit is received or no common enterprise exists, the combined loans or extensions of credit to a commonly owned or controlled group of borrowers shall not exceed three times the bank's lending limit.

AUTH: 32-1-211, 32-1-432, MCA
IMP: 32-1-211, 32-1-432, MCA

NEW RULE XIX COMBINATIONS OR GUARANTEES (1) Loans or extensions of credit to a person will be combined with loans or extensions of credit to one or more other persons when:

(a) proceeds of a loan or extension of credit are to be used for the direct benefit of the other person; or

(b) a common enterprise is deemed to exist between the persons, to the extent that loan proceeds are used for the benefit of the common enterprise and repayment is dependent upon the common enterprise.

(2) A loan or extension of credit guaranteed by a person shall be aggregated with the person's other loans and extensions of credit only to the extent that the person receives direct benefit from the loan.

AUTH: 32-1-211, 32-1-432, MCA
IMP: 32-1-211, 32-1-432, MCA

NEW RULE XX DIRECT BENEFIT (1) A direct benefit exists when the proceeds of a loan or extension of credit to a person are deemed to be used to the advantage of another person. The amount of the loan will be attributed to the other person when the proceeds, or assets purchased with the proceeds, are transferred to the other person. If the proceeds are used to acquire property, goods, or services through a bona fide arm's length transaction, a direct benefit does not exist regarding the seller of the property, goods, or services. A bona fide arm's length transaction is an actual transaction, performed in good faith, between two or more parties, with each party acting in their own self-interest.

AUTH: 32-1-211, 32-1-432, MCA
IMP: 32-1-211, 32-1-432, MCA

NEW RULE XXI COMMON ENTERPRISE (1) A common enterprise occurs when two or more persons combine to acquire, operate, or control a business enterprise or property interest.

(2) Credit to a common enterprise includes:

(a) loans or extensions of credit to two or more persons when the loans or extensions of credit are used for a common purpose; the expected source of repayment for each loan or extension of credit is the same for two or more of the persons, and those persons lack another source of income from which the loans or

extensions of credit, together with the person's other liabilities, may be fully repaid; and

(b) loans or extensions of credit made to persons who are related directly or indirectly through common control, including where one person is directly or indirectly controlled by another person; and if substantial financial interdependence exists between or among the persons. Substantial financial interdependence is deemed to exist when 50% or more of one person's gross receipts or gross expenditures, on an annual basis, are derived from transactions with the other person.

AUTH: 32-1-211, 32-1-432, MCA

IMP: 32-1-211, 32-1-432, MCA

NEW RULE XXII EXCLUSIONS (1) The following items will be excluded when calculating the amount of a person's total loans and extensions of credit:

(a) loans or extensions of credit, and participation in loans and extensions of credit, that have been sold, if:

(i) the loan, extension of credit, or the portion of the loan or extension of credit sold as a participation is sold without recourse to the selling bank; or

(ii) the participation agreement provides for a pro rata sharing of credit risk proportionate to the respective interests of the originating and participating lenders. Where a participation agreement provides that repayment must be applied first to the portions sold, a pro rata sharing will be deemed to exist only if the agreement also provides that, in the event of a default or comparable event defined in the agreement, participants must share in all subsequent repayments and collections in proportion to their percentage participation at the time of the occurrence of the event.

(b) loans, or extensions of credit, including portions thereof, that have been charged off the books of the bank in whole or in part, provided that the amounts charged off are:

(i) unenforceable by reason of discharge in bankruptcy;

(ii) no longer legally enforceable because of expiration of the statute of limitations or a judicial decision; or no longer legally enforceable for other reasons, provided that the bank maintains sufficient records to demonstrate that the loan is unenforceable;

(iii) credit exposures arising from securities financing transactions in which the securities financed are Type I securities, as defined in 12 CFR 1.2(j);

(iv) intraday credit exposures arising from a derivative transaction; or

(v) all other loans or portions of loans specifically exempted by provisions of 32-1-432, MCA, or other applicable laws.

AUTH: 32-1-211, 32-1-432, MCA

IMP: 32-1-211, 32-1-432, MCA

NEW RULE XXIII EXCEPTION TO GENERAL LIMITATION—

NONCONFORMING LOANS (1) A loan or extension of credit that was within the limit on loans and extensions of credit when made, will not be deemed a violation of

the legal lending limit and will be treated as nonconforming if the loan or extension of credit is no longer in conformity with the bank's limit on loans and extensions of credit because:

(a) the bank's capital has declined, borrowers have subsequently merged or formed a common enterprise, lenders have merged, or the limit on loans and extensions of credit or capital rules have changed; or

(b) collateral securing the loan or extension of credit, in order to satisfy the requirements of an exception to the limit, has declined in value.

(2) A bank must use reasonable efforts to bring a loan or extension of credit that is nonconforming as a result of (1)(a) into conformity with the bank's limit on loans and extensions of credit unless to do so would be inconsistent with safe and sound banking practices.

(3) A bank must bring a loan or extension of credit that is nonconforming as a result of circumstances described in (1)(b) into conformity with the bank's limit on loans and extensions of credit within thirty calendar days, except when judicial proceedings, regulatory actions, or other extraordinary circumstances beyond the bank's control prevent the bank from taking action.

(4) Notwithstanding any provision of this rule, the department may by interpretation and policy statement prescribe standards for treatment of nonconforming extensions of credit that are derivative transactions, repurchase agreements, reverse repurchase agreements, securities lending transactions, or securities borrowing transactions, and may, if required for state insured banks or state member banks, rely upon rules or interpretations of the FDIC or the Federal Reserve Board, as applicable.

AUTH: 32-1-211, 32-1-432, MCA

IMP: 32-1-211, 32-1-432, MCA

REASON: This new rule is designed to clarify what happens when a loan that was not a legal lending limit violation when made, becomes one due to a change in circumstances. Because the loan did not violate the legal lending limit when made, it should not be considered a violation of the legal lending limit statute. The loan should be considered nonconforming. The provisions of (2) and (3) discuss what should be done to bring the loan back into compliance with the legal lending limit, unless it is imprudent to do so or circumstances beyond the bank's control prevent it. Section (4) gives the department flexibility to address nonconforming extensions of credit that are derivative transactions, repurchase agreements, reverse repurchase agreements, securities lending transactions, or securities borrowing transactions. Currently, no guidance on these issues exist. The department seeks to set level expectations if a loan becomes nonconforming due to a change in circumstances.

5. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

2.59.1101 APPLICATION PROCEDURE FOR APPROVAL TO ESTABLISH A NEW BRANCH BANK (1) An existing state-chartered bank that does not meet the criteria in [New Rule III(2)] shall file with the ~~Division of Banking and Financial~~

Institutions department an application for approval to establish and operate a new branch bank.

(2) Applications shall be submitted ~~on a form acceptable to the Division of Banking and Financial Institutions. Information on the application format shall be obtained from the Division of Banking and Financial Institutions, Department of Administration, 301 South Park, P.O. Box 200546, Helena, MT 59620-0546, (406) 841-2920.~~ to the department using the Uniform Interstate Application/Notice form. Electronic submission of applications to banking@mt.gov is preferred.

(3) The applicant shall publish its notice of intent to establish a new branch bank using the following procedure:

(a) if the application for a new branch bank also requires the approval of either the federal reserve system or the federal deposit insurance corporation, the notice shall be published at the times and in the format required by the federal agency, except that the notice shall include the following ~~phrase~~ information which may be rephrased as needed: "Comments regarding this application should be forwarded in writing via email to banking@mt.gov. Comments will also be accepted by mail addressed to the Commissioner of Banking and Financial Institutions, Department of Administration, 301 South Park, P.O. Box 200546, Helena, MT 59620-0546. The application may be reviewed, during the comment period, at the above address by calling the commissioner's office at (406) 841-2920 and requesting an appointment";

(b) if the applicant does not fall under the regulatory jurisdiction of either the federal reserve system or the federal deposit insurance corporation, or if the publication requirement of the federal regulator has been eliminated, the ~~publication requirement shall be as follows~~:

(i) ~~The notice shall be published, following a format obtained from the division~~ department, in a newspaper of general circulation in the community or communities where the main office of the bank and proposed branch bank are located. If there is no such newspaper in the community, then the notice shall be published in the newspaper of general circulation published nearest thereto. Publication shall be made at least once a week on the same day for two consecutive weeks.

(4) All written comments concerning the application must be received by the ~~Division of Banking and Financial Institutions~~ department no later than 15 calendar days following the date of the last publication of the notice of intent. Comments received more than 15 calendar days after the date of the last publication will not be considered in the decision to approve or deny the application. ~~Oral comments will not be considered, except for oral testimony that may be offered in the event of a public hearing.~~

(5) The application shall be ~~mailed~~ emailed or delivered to the ~~Division of Banking and Financial Institutions~~ department not more than ten days subsequent to the first publication of notice.

~~(6) Applications for new branch banks must be accompanied by a nonrefundable fee of \$600 for each new branch bank application.~~

AUTH: 32-1-218, 32-1-372, MCA

IMP: 32-1-218, 32-1-372, MCA

REASON: This rule is being amended to be consistent with New Rule III. The rule is being amended to adopt the Uniform Interstate Application/Notice form and to make clear that email is the preferred method of delivery of applications and comments. The rule is being amended to allow the published statement to be rephrased as necessary for readability provided that the substance of the notice remains intact. Since there are no longer hearings on branch applications, oral comments cannot be accepted. The department has chosen to remove the fees for branch applications. The amount of money received in branch fees is insignificant in relation to the division's budget and the amount of assessments paid semi-annually by banks which is the main source of revenue required to fund the division's supervision of state-chartered banks. Over the past three fiscal years the division on average has received seven branch applications per fiscal year which translates to \$4,200 annually.

2.59.1102 REVIEW PROCEDURE FOR APPLICATIONS FOR APPROVAL TO ESTABLISH A NEW BRANCH BANK (1) and (2) remain the same.

~~(3) For applications that do not require a public hearing, the Division of Banking and Financial Institutions~~ The department shall issue its order approving or denying the application within 45 days after:

(a) through (c) remain the same.

~~(4) For applications that require a hearing, as provided for by 32-1-202(3) and 32-1-204(2), MCA, a final decision to approve or deny the application will be issued by the state banking board at a time after the completion of the hearing.~~

~~(5)~~(4) When the ~~Division of Banking and Financial Institutions~~ department or board approves an application to establish a new branch bank, it will provide written notification to the applicant and the appropriate federal regulatory agency(s). The notification will include any conditions subject to the approval. Summary notification of the decision will be mailed to all persons or entities that have submitted written comment to the application.

~~(6)~~(5) When the ~~Division of Banking and Financial Institutions~~ department denies an application to establish a new branch bank it will provide written notification to the applicant, the appropriate federal regulator(s) and all persons or entities that have submitted written comment to the application. The written notification to the applicant will include the reasons for the denial.

~~(7)~~(6) If a an administrative hearing is requested under MAPA on the denial of an application, the time for the filing of a request for a hearing must occur within 14 calendar days following the ~~division's~~ department's decision.

AUTH: 32-1-218, 32-1-372, MCA

IMP: 32-1-218, 32-1-372 MCA

REASON: SB 58 removed the requirement in 32-1-204, MCA, for hearings before the state banking board regarding bank branches. The rule is being redrafted to make clear that an applicant for a branch license who is denied a license may request an administrative hearing under MAPA if they make the request within 14 days after the denial. The authority and implementation citations are being

amended to accurately reflect all statutes implemented through the rule and provide the complete sources of the department's rulemaking authority.

2.59.1103 PROCEDURE FOLLOWING APPROVAL OF AN APPLICATION TO ESTABLISH A NEW BRANCH BANK (1) ~~For applications approved by the board or Division of Banking and Financial Institutions, the applicant bank within 18 months from the date of approval must establish and open the new branch bank for regular business. A bank must open an approved branch within 18 months of the date of branch bank approval.~~ Upon written request by the applicant and a finding of good cause by the ~~division~~ department, the 18-month period may be extended by the ~~division~~ department for a maximum of an additional six months.

(2) During the formation and establishment of the new branch bank, the applicant must inform the ~~division~~ department of significant changes affecting any of the commitments, representations or projections contained in the original application. Significant changes ~~including~~ include, but are not limited to, the location of the new branch bank, the services to be offered by the new branch bank, and the staffing or management of the new branch bank, ~~the costs to be incurred during the construction, furnishing and fitting of the new branch bank or the projected operating costs of the new branch bank.~~ Significant changes may be sufficient to void the ~~board or division's~~ department's approval.

(3) ~~No later than ten business days before the new branch bank is opened for business, the applicant shall certify to the Division of Banking and Financial Institutions that all conditions imposed with the division's approval have been met and inform the division of the proposed opening date. The division will then issue a final order authorizing the new branch bank to open for business.~~

AUTH: 32-1-218, 32-1-372, MCA
IMP: 32-1-218, 32-1-372, MCA

REASON: This rule is being redrafted for readability and to reflect the current processes regarding branching. The authority and implementation citations are being amended to accurately reflect all statutes implemented through the rule and provide the complete sources of the department's rulemaking authority.

6. The department proposes to repeal the following rules:

2.59.108 LIMITATIONS ON LOANS

AUTH: 32-1-432, MCA
IMP: 32-1-432, MCA

REASON: The department proposes to repeal this rule and replace it with the provisions found in New Rules XVII through XXIII for the reasons described in the general reasonable necessity statement and accompanying each of the proposed new rules.

2.59.901 CHANGE OF LOCATION

AUTH: 32-1-372, MCA
IMP: 32-1-372, MCA

REASON: The department proposes to repeal this rule and replace it with the provisions found in New Rules I through VI for the reasons described in the general reasonable necessity statement and accompanying each of the proposed new rules. The new rules provide greater specificity with respect to bank branch consolidations and relocations.

7. Concerned persons may present their data, views, or arguments concerning the proposed rulemaking to Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; or e-mailed to banking@mt.gov; and must be received no later than 5:00 p.m., August 21, 2020.

8. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to the person listed in 7 above no later than 5:00 p.m., August 5, 2020.

9. If the Division of Banking and Financial Institutions receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be four persons based on the 39 existing state-chartered banks.

10. An electronic copy of this proposal notice is available through the department's website at <http://doa.mt.gov/administrativerules>. The department strives to make its online version of the notice conform to the official published version, but advises all concerned persons that if a discrepancy exists between the official version and the department's online version, only the official text will be considered. In addition, although the department works to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

11. The Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request that includes the name, mailing address, and e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Notices will be sent by e-mail unless

a mailing preference is noted in the request. Such written requests may be mailed or delivered to Heather Hardman, Division of Banking and Financial Institutions, 301 S. Park, Ste. 316, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to banking@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

12. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by regular mail on January 29, 2020.

13. The department has determined that under 2-4-111, MCA, the proposed adoption, amendment, and repeal of the above-stated rules will not significantly and directly impact small businesses.

By: /s/ John Lewis
John Lewis, Director
Department of Administration

By: /s/ Don Harris
Don Harris, Rule Reviewer
Department of Administration

Certified to the Secretary of State July 14, 2020.