



**MONTANA  
ADMINISTRATIVE  
REGISTER**



**DEPARTMENT OF ADMINISTRATION**

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**NOTICE OF PROPOSED RULEMAKING**

**MAR NOTICE NO. 2025-900.1**

**Summary**

The department proposes to adopt, amend, amend and transfer, and repeal banking rules.

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**No Hearing Scheduled**

If the agency receives requests for a public hearing on the proposed rulemaking from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed rulemaking; 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.

The estimated number of persons directly affected by the proposed rulemaking is three based on 33 state-chartered banks in Montana.

**Comments**

Comments may be submitted using the contact information below. Comments must be received by Friday, August 22, 2025, at 5:00 p.m.

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**Accommodations**

The agency 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. Requests must be made by Wednesday, August 6, 2025, at 5:00 p.m.

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## Contact

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## General Reasonable Necessity Statement

The 2023 Montana Legislature abolished the State Banking Board in Chapter 23, Laws of 2023 (House Bill 138) which was signed by the Governor on February 28, 2023, effective October 1, 2023.

The State Banking Board's administrative rules are located in Title 2, chapter 60 and include rules pertaining to new bank charters, closed banks, and shell banks. Since the substance of these rules is still necessary, the department proposes to transfer the applicable rules to Title 2, chapter 59 and amend the rules to remove the State Banking Board from the chartering process.

Additionally, as part of its required biennial rule review, the department has identified several necessary amendments to the rules. Some of the proposed amendments include:

- amending punctuation as needed;
- replacing the word "shall" with "must" to be consistent with other rules in ARM Title 2, chapter 59;
- removing outdated or superfluous verbiage and/or simplifying text without altering the substance of the rule to provide plain language, making it more accessible and easier to understand;
- updating outdated two-word terms to the commonly accepted one-word form, such as web site to website;
- updating the department's website address;
- removing the division's physical address from rule and forms as their office has relocated earlier this year and may relocate again in the near future;
- updating authority and implementation citations to accurately reflect all statutes implemented through the rules and to provide the complete sources of the department's rulemaking authority;
- changing references to the Division of Banking and Financial Institutions of the Department of Administration from "division" to "department" and from "commissioner" to "department" for consistency with other rules in ARM Title 2, chapter 59; and
- updating website references to remove "www" and "http" as these prefixes are not necessary to successfully navigate to the department's website.

Where additional specific basis for a proposed action exist, the department will identify those reasons immediately following that rule.

### **NEW RULES 2 AND 10**

The department is defining a depository bank and nondepository trust company bank in Montana. Both are banks in Montana pursuant to 32-1-102, MCA. However, depository banks have FDIC insurance to protect depositors and liquidate the institution, while nondepository trust company banks do not. Therefore, the capital adequacy standards of the two types of banks are different. In order to adopt different capital standards for these types of banks, the department must first define them.

These definitions are based on Montana statutes that define different types of banks. The hallmark of a nondepository trust company bank is that it cannot accept money on deposit or make loans. Depository banks can.

### **REPEALED RULES**

The 2023 Montana Legislature amended 32-1-563, MCA, in House Bill 138 to allow officers of a bank to close a branch in the event of an emergency as defined in 32-1-561, MCA. House Bill 138 was signed by the Governor on February 28, 2023, and the section pertaining to the proposed repeal of these rules was effective on passage and approval.

The department proposes to repeal ARM 2.59.908 and 2.59.909 to allow banks to notify the department of a branch closure and subsequent reopening by providing the information requested in 32-1-564, MCA, by a method of their choice.

With the abolishment of the State Banking Board, several administrative rules that were specific to the board are now unnecessary. These rules include ARM 2.60.101, 2.60.201, 2.60.202, 2.60.204, 2.60.302, 2.60.903, and 2.60.907.

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## **Rulemaking Actions**

### **AMEND**

The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

### **2.59.106 INVESTMENT IN CORPORATE STOCK**

- (1) Ownership of stock in a bank service corporation is subject to the following conditions:
  - (a) The department adopts the definition of bank service corporation ~~defined by~~ in 12 USC 1861 as " (a corporation organized to perform services authorized

by this Act, all of the capital stock of which is owned by one or more insured banks)."

- (b) Services which may be provided by a bank service corporation include, but are not limited to:
  - (i) electronic data processing;
  - (ii) accounting services;
  - (iii) clearinghouse functions;
  - (iv) investment services for the account(s) of bank(s) ;
  - (v) advertising and marketing services;
  - (vi) communications services;
  - (vii) audit services;
  - (viii) loan review and collateral inspections;
  - (ix) retention of bank records, including data backup retention;
  - (x) safekeeping services, including vault and safe deposit box facilities;
  - (xi) courier services.
- (2) As provided by 32-1-422(3), MCA, a bank may invest in the stock of certain corporations. ~~The investment~~ in the stock of any approved corporation ~~shall be~~ is limited to:
  - (a) the greater of 5% of a bank's unimpaired capital and surplus;
  - (b) the minimum number of shares necessary to participate in government sponsored enterprises; or
  - (c) the minimum dollar value of such shares necessary for the bank to participate in the services or programs. This limitation ~~shall be~~ is exclusive of all accrued or declared stock dividends generated by such corporate stock.
- (3) In addition to the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Federal Agricultural Mortgage Corporation, the department has determined that it is in the public interest for banks to be able to invest in the following corporations, subject to the restrictions listed above:
  - (a) federal home loan banks.

**Authorizing statute(s):** 32-1-218, 32-1-422, MCA

**Implementing statute(s):** 32-1-422, MCA

## Reasonable Necessity Statement

Section (2) only applies to 32-1-422(3), MCA, and not the entire statute.

### 2.59.111 RETENTION OF BANK RECORDS

- (1) Records of customer accounts, as defined in (7), must be held in accordance with 32-1-491, MCA.
- (2) The publication "Bank Record Retention Periods - Appendix A to ARM 2.59.111" (Appendix A) establishes the minimum period for retention of bank records other than those specified in 32-1-491, MCA. ~~Appendix A is maintained by the Commissioner of Banking and Financial Institutions, and may be updated not more than once a year by the commissioner.~~ The June 2, 2014, edition of Appendix A is incorporated by reference as part of this rule. A copy of Appendix A can be obtained from the Division of Banking and Financial Institutions, Department of Administration, 301 South Park, P.O. Box 200546, Helena, MT 59620-0546 or found on the department's ~~web site~~ website at [https://banking.mt.gov/\\_docs/BanksTC/Bank\\_Records\\_Retention\\_Sched\\_A\\_6-2-2014.pdf](https://banking.mt.gov/_docs/BanksTC/Bank_Records_Retention_Sched_A_6-2-2014.pdf) banking.mt.gov.
- (3) When a bank reproduces records in any manner in the regular course of business as permitted by 32-1-492 through 32-1-494, MCA, the retention period of the reproduced records is the same as specified in Appendix A.
- (4) Banks ~~shall~~ must comply with all applicable federal banking laws and regulations requiring specific retention periods for the records ~~enumerated~~ set forth in those laws or regulations. If an ~~applicable~~ federal banking law or regulation concerning record retention conflicts with a retention period contained in 32-1-491, MCA, this rule, or Appendix A, a bank ~~shall~~ must comply with whichever retention period is longer. Banks ~~shall~~ must comply with ~~other applicable~~ state laws governing retention of personnel records, corporation records, etc.
- (5) If a bank does not maintain records set forth in Appendix A, but maintains similar records with ~~equivalent~~ the same information, the bank's similar records must be retained for the time set forth ~~for records~~ in Appendix A.
- (6) Records not covered by this rule or 32-1-491, MCA, must be retained for an appropriate period of time as determined ~~appropriate~~ by the bank's board of directors. Retention periods determined ~~appropriate~~ by the board must be ~~maintained~~ kept as a permanent part of the board's minutes.
- (7) "Customer accounts," for record retention purposes under 32-1-491, MCA, and this rule, means customer deposit accounts including savings deposit accounts, checking accounts, demand deposit accounts, certificates of deposit, safety deposit boxes,

trust accounts, Negotiable Order of Withdrawal (NOW) accounts, and money market deposit accounts.

**Authorizing statute(s):** 32-1-218, 32-1-491, MCA

**Implementing statute(s):** 32-1-218, 32-1-491, 32-1-492, MCA

### **Reasonable Necessity Statement**

Appendix A is maintained by the department, which oversees all rules related to ARM Title 2, chapter 59. It is not necessary to specifically state that in rule. Furthermore, since Appendix A has not been updated since 2014, there is minimal risk of the department making updates more than once a year.

### **2.59.113 INVESTMENTS BY BANKS TO PROMOTE THE PUBLIC WELFARE**

- (1) The department incorporates by reference the Office of the Comptroller of the Currency Code of Federal Regulations (12 CFR Part 24.1 through 24.7, 1996 edition) that implement 12 USC 24, which authorizes national banks to make investments designed primarily to promote the public welfare, including the welfare of low and moderate income areas or individuals, such as providing housing, services, or jobs.
- (2) ~~A copy of 12 CFR Part 24.1 through 24.7 may be obtained from the Division of Banking and Financial Institutions of the Department of Administration, 301 South Park, Suite 316, P.O. Box 200546, Helena, MT 59620-0546.~~

**Authorizing statute(s):** 32-1-218, 32-1-422, MCA

**Implementing statute(s):** 32-1-422, MCA

### **Reasonable Necessity Statement**

The department proposes to amend this rule to remove (2) as this information is readily available on the internet.

### **2.59.115 ADOPTION OF EXAMINATION PROCEDURE**

- (1) The department adopts the revised Uniform Financial Institution Rating System as one of its examination procedures. The edition adopted is the December 19, 1996, edition as published in the Federal Register at 61 Fed. Reg. 67021. It may be viewed at <http://www.fdic.gov/news/news/financial/1996/fil96105.pdf>. A copy may be obtained from the Federal Financial Institutions Examination Council (FFIEC) at 3501 Fairfax Drive, Room D-8073a, Arlington, VA 22226-3550.

**Authorizing statute(s):** 32-1-218, MCA

**Implementing statute(s):** 32-1-211, MCA

## **2.59.116 DEFINITIONS**

The following definitions apply to ARM 2.59.117 through 2.59.124:

- (1) "Actuarial method" means the method of allocating payments made on a debt between the amount financed and the finance charge. Under this method, a payment is applied first to the accumulated finance charge and any remainder is subtracted from, or any deficiency is added to, the unpaid balance of the amount financed.
- (2) "Contract" means a debt cancellation contract or a debt suspension agreement.
- (3) "Customer" means an individual who obtains from a bank an extension of credit that is primarily for personal, family, or household purposes. For purposes of this subchapter, the term means the same thing as "borrower."
- (4) "Debt cancellation contract" means a loan term or contractual arrangement modifying loan terms under which a bank agrees, for a fee, to suspend all or part of a customer's obligation to repay an extension of credit from that bank upon the occurrence of a specified event. The agreement must specify the extension of credit to which it pertains. The extension of credit to which it pertains may be a direct loan made by the bank or an indirect loan in the form of a retail installment sales contract purchased by or assigned to the bank. In the case of an indirect loan in the form of a retail installment sales contract, the debt cancellation contract may be offered by the bank through a nonexclusive, unaffiliated agent contingent upon the bank purchasing or taking assignment of the indirect loan. The agreement may be separate from or a part of other loan documents. A debt cancellation contract may be offered and purchased ~~either contemporaneously with the other terms of the loan agreement~~ at the time the loan is made or subsequently.
- (5) "Debt suspension agreement" means a loan term or contractual arrangement modifying loan terms under which a bank agrees, for a fee, to suspend all or part of

a customer's obligation to repay an extension of credit from that bank upon the occurrence of a specified event. The agreement must specify the extension of credit to which it pertains. The extension of credit may be a direct loan made by the bank or an indirect loan in the form of a retail installment sales contract purchased by or assigned to the bank. In the case of ~~an indirect loan in the form of a retail installment sales contract~~, the debt suspension agreement may be offered by the bank through a nonexclusive, unaffiliated agent contingent upon the bank purchasing or taking assignment of the indirect loan. The agreement may be separate from or a part of other loan documents. The term "debt suspension agreement" does not include loan payment deferral arrangements in which the triggering event is the borrower's unilateral election to defer repayment or the bank's unilateral decision to allow a deferral of repayment.

- (6) "Guaranteed asset protection (GAP) waiver or agreement" means a ~~term of an extension of credit or~~ contractual arrangement modifying the terms of an extension of credit for the purchase of titled personal property under which a bank agrees to cancel the customer's obligation to repay the portion of the extension of credit that exceeds the amount paid by the primary insurer of the titled personal property upon the insurer's declaration that the titled personal property is a total loss or determination that the titled personal property is stolen and not recoverable.
- (7) "Loan" or "extension of credit" means a direct or indirect advance of funds to a customer made on the basis of any obligation of that customer to repay the funds or that is repayable from specific property pledged by or on the customer's behalf. The term also includes any liability of a bank to advance funds to or on behalf of a customer pursuant to a contractual commitment.
- (8) "Residential mortgage loan" means a loan for personal, family, or household purposes secured by a one- to four-family residential property.

**Authorizing statute(s):** 32-1-218, 32-1-429, MCA

**Implementing statute(s):** 32-1-429, MCA

### **Reasonable Necessity Statement**

The department proposes to amend this rule to clarify that the definitions are applicable to debt cancellation and debt suspension rules and provide the rule numbers in a lead-in sentence prior to the definitions.

## **2.59.125 DEFINITIONS APPLICABLE TO DERIVATIVE TRANSACTIONS AND SECURITIES FINANCING TRANSACTIONS**

The following definitions apply to rules within this subchapter:

- (1) "Bank" or "state bank" has the same meaning as "eligible state bank" in (10).
- (2) "Borrower" means:
  - (a) a person who is named as a borrower or debtor in a loan or extension of credit;
  - (b) a person to whom a bank has credit exposure arising from a derivative transaction or securities financing transaction entered by the bank; or
  - (c) any other person, including a drawer, endorser, or guarantor, who is deemed to be a borrower under the direct benefit or common enterprise tests in 12 CFR 32.5 and ARM ~~2.59.108~~ 2.59.138 through 2.59.143.
- (3) "Contractual commitment to advance funds" means:
  - (a) a bank's obligation to:
    - (i) make payment directly or indirectly to a third person contingent upon default by a customer of the bank in performing an obligation and to make such payment in keeping with the agreed-upon terms of the customer's contract with the third person, or to make payments upon some other stated condition;
    - (ii) guarantee or act as surety for the benefit of a person;
    - (iii) advance funds under a qualifying commitment to lend, as defined in 12 CFR 32.2(t); or
    - (iv) advance funds under a standby letter of credit, as defined in 12 CFR 32.2(ee) and 12 CFR 208.24, a put, or other similar arrangement.
  - (b) The term does not include commercial letters of credit and similar instruments:
    - (i) under which the issuing bank expects the beneficiary to draw on the issuer;
    - (ii) that do not guarantee payment; and
    - (iii) that do not provide payment if a third party defaults.
- (4) "Credit derivative" means a financial contract executed under standard industry credit derivative documentation that allows one party (the protection purchaser) to transfer the credit risk of one or more exposures to another party (the protection provider).
- (5) "Derivative transaction" includes any transaction that is a contract, agreement, swap, warrant, note, or option that is based, in whole or in part, on the value of,

any interest in, or any quantitative measure or the occurrence of any event relating to one or more commodities, securities, currencies, interest, or other rates, indices, or other assets. The term includes a securities financing transaction.

- (6) "Effective margining arrangement" means a master legal agreement governing derivative transactions between a bank and a counterparty that requires the counterparty to post, on a daily basis, variation margin to fully collateralize that amount of the bank's net credit exposure to the counterparty that exceeds \$25 million created by the derivative transactions covered by the agreement.
- (7) "Eligible credit derivative" means a single-name credit derivative or a standard, non-tranched index credit derivative provided that:
  - (a) the derivative contract meets the requirements of an eligible guarantee as defined in (8) and has been confirmed by the protection purchaser and the protection provider;
  - (b) any assignment of the derivative contract has been confirmed by all relevant parties;
  - (c) if the credit derivative is a credit default swap, the derivative contract includes the following credit events:
    - (i) failure to pay any amount due under the terms of the reference exposure, subject to any applicable minimal payment threshold that is consistent with standard market practice and with a grace period that is closely in line with the grace period of the reference exposure; and
    - (ii) bankruptcy, insolvency, or inability of the obligor on the reference exposure to pay its debts, or its failure or admission in writing of its inability generally to pay its debts as they become due, and similar events;
  - (d) the terms and conditions dictating the manner in which the derivative contract is to be settled are incorporated into the contract;
  - (e) if the derivative contract allows for cash settlement, the contract incorporates a robust valuation process to reliably estimate loss with respect to the derivative and specifies a reasonable period for obtaining post-credit event valuations of the reference exposure;
  - (f) if the derivative contract requires the protection purchaser to transfer an exposure to the protection provider at settlement, the terms of at least one of the exposures that is permitted to be transferred under the contract provide that any required consent to transfer may not be unreasonably withheld; and
  - (g) if the credit derivative is a credit default swap, the derivative contract:

- (i) identifies the parties responsible for determining whether a credit event has occurred;
  - (ii) specifies that the determination is not the sole responsibility of the protection provider; and
  - (iii) gives the protection purchaser the right to notify the protection provider of the occurrence of a credit event.
- (8) "Eligible guarantee" means a guarantee that:
  - (a) is written and unconditional;
  - (b) covers all or a pro rata portion of all contractual payments of the obligor on the reference exposure;
  - (c) gives the beneficiary a direct claim against the protection provider;
  - (d) is not unilaterally cancelable by the protection provider for reasons other than the beneficiary's breach of contract;
  - (e) is legally enforceable against the protection provider in a jurisdiction where the protection provider has sufficient assets against which a judgment may be attached and enforced;
  - (f) requires the protection provider to make payment to the beneficiary on the occurrence of a default (as defined in the guarantee) of the obligor on the reference exposure in a timely manner without the beneficiary first having to take legal action to pursue the obligor for payment;
  - (g) does not increase the beneficiary's cost of credit protection on the guarantee in response to deterioration in the credit quality of the reference exposure; and
  - (h) is not provided by an affiliate of the bank, unless the affiliate is an insured depository institution, bank, securities broker or dealer, or insurance company that:
    - (i) does not control the bank; and
    - (ii) is subject to consolidated supervision and regulation comparable to that imposed on U.S. depository institutions, securities broker-dealers, or insurance companies as applicable.
- (9) "Eligible protection provider" means:
  - (a) a sovereign entity (a central government, including the U.S. government, an agency, department, ministry, or central bank);

- (b) the Bank for International Settlements, the International Monetary Fund, the European Central Bank, the European Commission, or a multilateral development bank;
  - (c) a federal home loan bank;
  - (d) the Federal Agricultural Mortgage Corporation;
  - (e) a depository institution, as defined in section 3 of the Federal Deposit Insurance Act, 12 USC 1813(c);
  - (f) a bank holding company, as defined in section 2 of the Bank Holding Company Act, as amended, 12 USC 1841;
  - (g) a savings and loan holding company, as defined in section 10 of the Home Owners' Loan Act, 12 USC 1467a;
  - (h) a securities broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934, 15 USC 78o, et seq.;
  - (i) an insurance company that is subject to the supervision of a state insurance regulator;
  - (j) a foreign banking organization;
  - (k) a non-U.S.-based securities firm or a non-U.S.-based insurance company that is subject to consolidated supervision and regulation comparable to that imposed on U.S. depository institutions, securities broker-dealers, or insurance companies; and
  - (l) a qualifying central counterparty.
- (10) "Eligible state bank" means a bank organized under Montana laws that:
- (a) is well-capitalized as defined in the prompt corrective action rules applicable to the bank; and
  - (b) has a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System in connection with the bank's most recent examination or subsequent review.
- (11) "Loans," "extensions of credit," or "obligations" have the meaning in 32-1-432, MCA, and any credit exposure determined under ARM 2.59.129 arising from a derivative transaction or a securities financing transaction.
- (a) The terms include:
    - (i) a contractual commitment to advance funds;
    - (ii) a maker or endorser's obligation arising from a bank's discount of commercial paper;

- (iii) a bank's purchase of third-party paper subject to an agreement that the seller will repurchase the paper upon default or at the end of a stated period. The amount of the bank's loan is the total unpaid balance of the paper owned by the bank less any applicable dealer reserves retained by the bank and held by the bank as collateral security. Where the seller's obligation to repurchase is limited, the bank's loan is measured by the total amount of the paper the seller may ultimately be obligated to repurchase. A bank's purchase of third-party paper without direct or indirect recourse to the seller is not a loan or extension of credit to the seller;
  - (iv) an overdraft, whether or not prearranged, but not an intraday overdraft for which payment is received before the close of business of the bank that makes the funds available;
  - (v) the sale of federal funds with a maturity of more than one business day, but not federal funds with a maturity of one day or less or federal funds sold under a continuing contract;
  - (vi) loans or extensions of credit that have been charged off on the books of the bank in whole or in part unless the loan or extension of credit is:
    - (A) unenforceable by reason of discharge in bankruptcy;
    - (B) no longer legally enforceable because of expiration of the statute of limitations or a judicial decision; or
    - (C) no longer legally enforceable for other reasons provided that the bank maintains sufficient records to demonstrate that the loan is unenforceable; and
  - (vii) a bank's purchase of securities subject to an agreement that the seller will repurchase the securities at the end of a stated period, but does not include a bank's purchase of Type I securities, as defined in (15), subject to a repurchase agreement, where the purchasing bank has assured control over or has established its rights to the Type I securities as collateral.
- (b) The terms do not include:
  - (i) additional funds advanced for a borrower's benefit by a bank for payment of taxes, insurance, utilities, security, and maintenance and operating expenses necessary to preserve the value of real property securing the loan, consistent with safe and sound banking practices, but only if the advance is for the protection of the bank's interest in the collateral, and provided that such amounts must be treated as an extension of credit if a new loan or extension of credit is made to the borrower;

- (ii) accrued and discounted interest on an existing loan or extension of credit, including interest that has been capitalized from prior notes and interest that has been advanced under terms and conditions of a loan agreement;
- (iii) financed sales of a bank's own assets, including other real estate owned, if the financing does not put the bank in a worse position than when the bank held title to the assets;
- (iv) a renewal or restructuring of a loan as a new "loan or extension of credit," following the exercise by a bank of reasonable efforts, consistent with safe and sound banking practices, to bring the loan into conformance with the lending limit, unless new funds are advanced by the bank to the borrower (except in circumstances permitted under 12 CFR 32.3(b)(5)), a new borrower replaces the original borrower, or unless the department singly or in collaboration with the appropriate federal banking agency determines that a renewal or restructuring was undertaken as a means to evade the bank's lending limit;
- (v) amounts paid against uncollected funds in the normal process of collection;
- (vi) with regard to participations:
  - (A) that portion of a loan or extension of credit sold as a participation by a bank on a nonrecourse basis, provided that the participation results in 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 ~~shall~~ must share in all subsequent repayments and collections in proportion to their percentage participation at the time of the occurrence of the event;
  - (B) when an originating bank funds the entire loan, it must receive funding from the participants before the close of business of its next business day. If the participating portions are not received within that period, then the portions funded will be treated as a loan by the originating bank to the borrower. If the portions so attributed to the borrower exceed the originating bank's lending limit, the loan may be treated as nonconforming subject to the circumstances included in 12 CFR 32.2(q)(2)(vi)(B) rather than a violation if:

- (I) the originating bank had a valid and unconditional participation agreement with one or more participants that was sufficient to reduce the loan to within the originating bank's lending limit;
  - (II) the participant reconfirmed its participation and the originating bank had no knowledge of information that would permit the participant to withhold its participation; and
  - (III) the participation was to be funded by close of business of the originating bank's next business day.
- (12) "Qualifying central counterparty" has the same meaning as the term has in 12 CFR Part 3, Appendix C, Section 2.
- (13) "Qualifying master netting agreement" means any written, legally enforceable bilateral agreement, provided that:
  - (a) the agreement creates a single legal obligation for all individual transactions covered by the agreement upon an event of default, including bankruptcy, insolvency, or similar proceeding of the counterparty;
  - (b) the agreement provides the bank the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set off collateral promptly upon an event of default of the counterparty, including upon an event of bankruptcy, insolvency, or similar proceeding, provided that, in any such case, any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions;
  - (c) the bank has conducted sufficient legal review to conclude with a well-founded basis (and maintains sufficient documentation of that legal review) that:
    - (i) the agreement meets the requirements of (13)(b); and
    - (ii) in the event of a legal challenge (including one resulting from default or from bankruptcy, insolvency, or similar proceedings), the relevant court and administrative authorities would find the agreement to be legal, valid, binding, and enforceable under the law of the relevant jurisdictions;
  - (d) the bank establishes and maintains procedures to monitor possible changes in relevant law and to ensure that the agreement continues to satisfy the requirements of this definition; and
  - (e) the agreement does not contain a walkaway clause (that is, a provision that permits a ~~nondefaulting~~ non-defaulting counterparty to make a lower

payment than it would make otherwise under the agreement, or no payment at all, to a defaulter or the estate of a defaulter, even if the defaulter or the estate of the defaulter is a net creditor under the agreement).

- (14) "Securities financing transaction" means a repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction.
- (15) "Type I securities" means:
- (a) obligations of the United States;
  - (b) obligations issued, insured, or guaranteed by a department or an agency of the United States government, if the obligation, insurance, or guarantee commits the full faith and credit of the United States for the repayment of the obligation;
  - (c) obligations issued by a department or agency of the United States government or an agency or political subdivision of a state of the United States, that represent an interest in a loan or a pool of loans made to third parties, if the full faith and credit of the United States have been validly pledged for the full and timely payment of interest on, and principal of, the loans in the event of nonpayment by the third party obligor(s); and
  - (d) general obligations of a state of the United States or any political subdivision thereof; and
  - (e) municipal bonds if the bank is well capitalized.

**Authorizing statute(s):** 32-1-211, 32-1-218, 32-1-432, MCA

**Implementing statute(s):** 32-1-211, 32-1-432, MCA

### **Reasonable Necessity Statement**

In reference to the amendment in (1)(c), ARM 2.59.108 was repealed on September 12, 2020, in MAR Notice No. 2-59-596, and replaced with ARM 2.59.138 through 2.59.143. The meaning of ARM 2.59.108 was not changed but rather redrafted to improve readability and aid in comprehension.

### **2.59.129 CREDIT EXPOSURE ARISING FROM DERIVATIVES AND SECURITIES FINANCING TRANSACTIONS**

- (1) For purposes of determining a bank's lending limit under 32-1-432, MCA, the bank's credit exposure arising from a derivatives transaction or a securities financing transaction entered by a bank must be calculated in accordance with the methods and models contained in Appendix A to ARM 2.59.129, ~~dated April 20, 2015, version,~~ which is adopted and incorporated by reference. Appendix A to ARM 2.59.129, ~~dated April 20, 2015, version,~~ may be found on the department's ~~web site~~ website at ~~http://banking.mt.gov/Home/Forms under Banks and Trust Companies~~ banking.mt.gov.

**Authorizing statute(s):** 32-1-218, 32-1-432, 32-1-433, MCA

**Implementing statute(s):** 32-1-432, 32-1-433, MCA

#### **2.59.130 CHANGE IN CONTROL**

- (1) An applicant filing under 32-1-378(1)(b), MCA, ~~shall~~ must use the Application for Change in Control form, ~~dated June 29, 2020~~ April 30, 2025, version, which is located at ~~www.banking.mt.gov~~ banking.mt.gov.
- (2) An applicant or other person subject to this rule ~~shall~~ must notify the department immediately of any material changes ~~in~~ relevant to 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.

**Authorizing statute(s):** 32-1-211, 32-1-378, MCA

**Implementing statute(s):** 32-1-211, 32-1-378, MCA

#### **2.59.134 CONVERSION OF A NATIONAL BANK TO A STATE BANK**

- (1) Upon conversion:
  - (a) the resulting state bank ~~succeeds, without other transfer, to~~ has 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~~ must 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.
- (3) A bank that desires to convert from a national bank to a state bank ~~shall~~ must use the Application for Conversion of an Existing National-Chartered Bank to a State-Chartered Bank form, ~~dated June 30, 2020~~ April 30, 2025, version, which is located on the department's website at [banking.mt.gov](http://banking.mt.gov).
- (4) A nonrefundable application fee of \$1,500 must be paid to the department at the time of application.

**Authorizing statute(s):** 32-1-218, MCA

**Implementing statute(s):** 32-1-374, MCA

### **Reasonable Necessity Statement**

The department proposes to establish a \$1,500 fee for applications for conversion to a state charter. The department's staff will spend a moderate amount of time reviewing and analyzing a conversion application. The department is self-funded through assessments on banks, mutual associations, and credit unions as well as licensing fees for other programs the division

administers. The department receives no general fund appropriation. The application fee is necessary to make the fee commensurate with the associated costs of the department. At this time, the department does not anticipate any new charter conversion applications, so no known person will be affected by this fee and the cumulative amount anticipated for all persons is zero.

## **2.59.135 FORM TO REPORT DIRECTORS AND OFFICERS**

- (1) Banks ~~shall~~ must use file the List of Officers and Directors form, ~~dated June 29, 2020, version, which is located on the department's website at [www.banking-mt.gov](http://www.banking-mt.gov)~~ 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.~~

**Authorizing statute(s):** 32-1-211, 32-1-218, MCA

**Implementing statute(s):** 32-1-211, 32-1-218, 32-1-322, 32-1-325, MCA

### **Reasonable Necessity Statement**

The 2023 Montana Legislature amended 32-1-325, MCA, in House Bill 138, to provide a fixed due date of July 31 for the submission of the List of Officers and Directors form.

## **2.59.902 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~~ 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 ARM 2.59.903 and 2.59.907.
- (2) "Customer" means a person who opened an account at the branch location in question, is currently associated with that branch, or whose address is within the same municipal area as the branch, as the bank determines is appropriate.
- (3) "Principal city" means an area designated as a "principal city" by the federal Office of Management and Budget.

- (4) "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 a short distance.
- (5) "Short distance" means:
  - (a) within a 1,000-foot radius of the current location of the branch or loan production office if it is located within the principal city of a metropolitan statistical area (MSA);
  - (b) within a one-mile radius of the current location of the branch or loan production office if the branch or loan production office is not located within a principal city, but is within an MSA; or
  - (c) within a two-mile radius of the branch or loan production office if it is not located in an MSA.

**Authorizing statute(s):** 32-1-211, 32-1-218, 32-1-222, 32-1-372, MCA

**Implementing statute(s):** 32-1-211, 32-1-218, 32-1-222, 32-1-372, MCA

### **Reasonable Necessity Statement**

The department proposes to amend this rule to clarify that the short distance requirement also pertains to loan production offices. The definition of "branch" in 32-1-109(6), MCA, specifically states that the term does not include a loan production office.

## **2.59.903 LOAN PRODUCTION OFFICE**

- (1) A bank that desires to establish a new loan production office in this state ~~shall provide written notice to~~ must obtain prior approval from 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](http://www.banking.mt.gov).~~
- (2) A bank must file an application with the department prior to opening a loan production office using the Application to Establish a Loan Production Office form, April 30, 2025, version, located at [banking.mt.gov](http://banking.mt.gov). If an application is incomplete, the department must notify the applicant by e-mail. An application will not be considered to have been received until it is in a complete form. An application is complete when all information required by the application form has been submitted and received. The department may request additional information from an applicant even if the application is considered complete.

- (3) The department must approve or deny the application within 45 days of:
- (a) the date of the last publication of the notice of intent to establish a new loan production office; or
  - (b) the date on which a complete application is received, whichever is later.
- (4) The 45-day deadline may be extended by the department when review of the complete application raises questions or concerns that require additional information from the applicant or any other entity or person. The applicant or other entity or person shall have 60 days to provide the requested information to the department. Following the receipt of all requested additional information and a complete application, the department may extend its review by a one-time 14-calendar day period.
- ~~(2)~~(5) A bank organized under the laws of Montana that intends to open a loan production office in another state shall must 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 Application of Intent to Establish a Loan Production Office form, if they are not already included in the form, to the department.
- ~~(3)~~(6) A Montana state-chartered bank that desires to relocate or close a loan production office temporarily or permanently shall must give notice to its customers using the customer Notice of Relocation of Loan Production Office form, ~~dated June 29, 2020~~ April 30, 2025, version, or customer Notice of Closure of Loan Production Office form, ~~dated June 29, 2020~~ April 30, 2025, version, located at ~~www.banking.mt.gov~~ banking.mt.gov.
- ~~(4)~~(7) The relocation or closure form shall must be ~~provided to customers of the loan production office by posting~~ posted it at the loan production office at least fifteen ~~thirty~~ days before the relocation or closure of the office. The relocation or closure form shall must be provided to the department at the same time.
- ~~(5)~~(8) The department reserves the right to request additional information regarding opening, closing, or relocation of a loan production office.
- ~~(6)~~(9) If the loan production office will be using an assumed name, compliance with 32-1-402, MCA, is required.
- ~~(7)~~(10) Each loan production office ~~shall be~~ is 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.~~

**Authorizing statute(s):** 32-1-211, 32-1-218, 32-1-222, MCA

**Implementing statute(s):** 32-1-211, 32-1-222, 32-1-561, 32-1-562, 32-1-563, 32-1-564, 32-1-565, MCA

### **Reasonable Necessity Statement**

The 2023 Montana Legislature amended 32-1-222, MCA, in House Bill 138, to require a bank to submit an application to the department to establish a loan production office rather than submitting a notification to the department. The department has a process to review and approve branches. The 2023 Montana Legislature made the process for review and approval of loan production offices consistent with the branch process. However, the department added clarification in (4), stating that an applicant or other entity or person must provide any additional requested information to the department within 60 days. Without this, the application would remain open indefinitely. By adding in the 60-day time frame, it will allow the department to close and/or deny an application. This proposed change will also be amended in the branch application rules of ARM 2.59.1102(3)(c).

The purpose of (8) was met in 2020 and is no longer applicable.

### **2.59.904 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~~ must be given using the Request for Summary Approval of Branch form, ~~dated June 29, 2020~~ April 30, 2025, version, which is located at ~~www.banking.mt.gov~~ banking.mt.gov.
- (2) In order to qualify for summary notice, the bank ~~shall~~ must:
  - (a) have ~~received its~~ operated a bank charter in good standing for 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 regulatory 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~~ must 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~~ must comply with ARM 2.59.1101 and 2.59.1103.
- (5) The department ~~shall~~ must approve or deny a summary notice and application within 15 business days of receipt of a complete notice and application.

**Authorizing statute(s):** 32-1-211, 32-1-218, 32-1-372, MCA

**Implementing statute(s):** 32-1-211, 32-1-218, 32-1-372, MCA

#### **Reasonable Necessity Statement**

The department proposes to amend (2)(a) to establish that only banks which have consistently demonstrated good practices will be recognized as qualifying institutions and able to utilize the summary approval process.

### **2.59.906 BANKS ORGANIZED OUTSIDE OF MONTANA BRANCHING INTO MONTANA**

- (1) Banks organized under the laws of a state other than Montana ~~or a~~ and national banks must submit copies of all required regulatory filings or notices required by the home state and federal agencies to the department and comply with ARM ~~2.59.904~~ 2.59.1101 and 2.59.1103 in order to branch into Montana.

**Authorizing statute(s):** 32-1-211, 32-1-218, 32-1-372, MCA

**Implementing statute(s):** 32-1-211, 32-1-218, 32-1-372, MCA

#### **Reasonable Necessity Statement**

The department proposes to amend this rule to clarify that banks organized out of Montana must provide the requirements in ARM 2.59.1101 and 2.59.1103. Only a bank organized in Montana can be considered a qualifying institution and use the summary notice process provided in ARM 2.59.904.

### **2.59.907 CLOSING OR RELOCATING A BRANCH BANK**

- (1) A Montana state-chartered bank that desires to relocate or close a branch temporarily or permanently ~~shall~~ must give notice to its customers using the

~~customer~~ Notice of Relocation of Bank Branch form, ~~dated June 29, 2020~~ April 30, 2025, version, or ~~customer~~ Notice of Closure of Bank Branch form, ~~dated June 29, 2020, version~~. The forms are located on the department's website at ~~www.banking.mt.gov~~ [banking.mt.gov](http://banking.mt.gov). A bank may amend the form as needed or include additional information in the form as appropriate.

- (2) The relocation or closure form ~~shall~~ must be ~~provided to customers of the branch by posting~~ posted it at the branch at least thirty days before the relocation or closure of the branch. The relocation or closure form ~~shall~~ must be provided to the department at the same time. The bank ~~shall~~ must 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~~ the closure or relocation of a branch.

**Authorizing statute(s):** 32-1-211, 32-1-218, 32-1-372, MCA

**Implementing statute(s):** 32-1-211, 32-1-218, 32-1-372, MCA

### **Reasonable Necessity Statement**

The department proposes to amend this rule by providing the full name of the form and removing any unnecessary language.

## **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 ARM 2.59.904(2) ~~shall~~ must file with the department an application for approval to establish and operate a new branch bank.
- (2) Applications ~~shall~~ must be submitted to the department using the Uniform Interstate Application/Notice form. Electronic submission of applications to [banking@mt.gov](mailto:banking@mt.gov) is preferred.
- (3) The applicant ~~shall~~ must 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 ~~f~~Federal ~~r~~Reserve ~~s~~System or the ~~f~~Federal ~~d~~Deposit ~~i~~nsurance ~~e~~Corporation, the notice ~~shall~~ must be published at the times and in the format required by the federal agency, except that the notice ~~shall~~ must include the following information which may be rephrased as needed:  
"Comments regarding this application should be forwarded in writing via email to [banking@mt.gov](mailto:banking@mt.gov). Comments will also be accepted by mail

addressed to the ~~Commissioner~~ Division 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~~ department at (406) 841-2920 and requesting an appointment";

- (b) if the applicant does not fall under the regulatory jurisdiction of either the ~~f~~Federal ~~r~~Reserve ~~s~~System or the ~~f~~Federal ~~d~~Deposit ~~i~~Insurance ~~e~~Corporation, or if the publication requirement of the federal regulator has been eliminated, the notice ~~shall~~ must be published, following a format obtained from the 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~~ must be published in the closest major newspaper of general circulation ~~published nearest thereto~~. Publication ~~shall~~ must 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 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.
- (5) The application ~~shall~~ must be emailed or delivered to the department not more than ten days subsequent to the first publication of notice.

**Authorizing statute(s):** 32-1-218, 32-1-372, MCA

**Implementing statute(s):** 32-1-218, 32-1-372, MCA

#### **Reasonable Necessity Statement**

The department proposes to amend (3)(b) to provide clarity regarding the type of newspaper required. The amendment specifies that it should be the closest major newspaper in proximity to the main office and for the proposed new branch. Major newspapers are typically published daily reaching a wide audience. This change aims to ensure that the selected newspaper effectively reaches relevant members of the community.

#### **2.59.1102 REVIEW PROCEDURE FOR APPLICATIONS FOR APPROVAL TO ESTABLISH A NEW BRANCH BANK**

- (1) The ~~division~~ department ~~shall~~ must process applications for new branch banks in the order in which they are received. If an application is incomplete, the ~~division~~ department ~~shall~~ will notify the applicant by e-mail. An application will not be considered to have been received until it is in a complete form. An application is complete when all information required by the application form has been submitted and received. The ~~division~~ department may request additional information from an applicant even if the application is considered complete.
- (2) Factors that will be considered when determining whether to approve an application to establish a new branch bank include, but are not limited to, the following:
  - (a) the financial history and condition of the applicant;
  - (b) the capital levels and capital structure of the applicant;
  - (c) the quality, financial and banking experience and depth of management of the applicant and the proposed branch bank;
  - (d) the convenience and needs of the community to be served at the proposed location of the new branch bank as evidenced by a brief statement provided by the applicant;
  - (e) earnings prospects of the applicant after establishing the new branch bank; and
  - (f) any other factors ~~the division considers~~ that could adversely affect the safety and soundness of the applicant or the viability of the new branch bank.
- (3) The department ~~shall~~ must ~~issue its order approving or denying~~ approve or deny the application within 45 days ~~after~~ of:
  - (a) the date of the last publication of the notice of intent to establish a new branch bank; or
  - (b) the date on which a complete application is received, whichever is later;
- ~~(4)~~ (4) The 45-day deadline may be extended by the ~~division~~ department when review of the complete application raises questions or concerns that require additional information from the applicant or any other entity or person. ~~Once the additional information is received by the division, the 45-day deadline may be extended by no further than 14 calendar days. The applicant or other entity or person shall have 60 days to provide the requested information to the department. Following the receipt of all requested additional information and a complete application, the department may extend its review by a one-time 14-calendar day period.~~
- ~~(4)~~ (5) When the 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.

~~(5)~~(6) When the 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.

~~(6)~~(7) If 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 department's decision.

**Authorizing statute(s):** 32-1-218, 32-1-372, MCA

**Implementing statute(s):** 32-1-218, 32-1-372, MCA

### **Reasonable Necessity Statement**

The department proposes amending (3)(c) to state that an applicant or other entity or person must provide any additional requested information to the department within 60 days. Without this, the application would remain open indefinitely. By adding in the 60-day time frame, it will allow the department to close and/or deny an application.

### **TRANSFER AND AMEND**

The rules proposed to be transferred and amended are as follows, stricken matter interlined, new matter underlined:

#### **2.60.203 (2.59.2202) APPLICATION PROCEDURE FOR A CERTIFICATE OF AUTHORIZATION FOR A STATE-CHARTERED BANK**

- (1) ~~One or more individual incorporators desiring to organize a bank shall file with the Commissioner of Banking and Financial Institutions an application to the State Banking Board for a certificate of authorization for a state-chartered bank. The Division of Banking and Financial Institutions of the Department of Administration~~ application for a proposed new depository bank to be located in Montana must submit the following forms, which are adopted and incorporated by reference, to the department adopts and incorporates by reference:
  - (a) the Interagency Charter and Federal Deposit Insurance Application,  
~~(Expiration Date: August 31, 2019)~~ October 24, 2022, version, as the form that ~~shall~~ must be completed when applying for a certificate of authorization; and

- (b) the Interagency Biographical and Financial Report, ~~(Expiration Date: April 30, 2017)~~ August 26, 2024, version, for use by individuals in conjunction with the Interagency Charter and Federal Deposit Insurance Application. The application and biographical and financial report are available at on the Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546, or on the division web site department's website located at <https://banking.mt.gov/Home/Forms> [banking.mt.gov](https://banking.mt.gov).
- (2) An nonrefundable application fee of \$10,000 shall must be paid to the state of Montana department at the time of application and thereafter shall not be refundable in whole or in part.
- (3) With the application, the applicant must submit a summary of the evidence the applicant intends to present at the hearing for a new bank charter to demonstrate the applicant meets the standards listed in 32-1-203, MCA, so that the board may determine whether to grant or deny the application. For purposes of this rule, a bank must be organized initially as a corporation under Title 35, chapter 14, MCA.
- (4) In the event that an application is incomplete in any respect or if additional information is required, the applicants will be so notified by the Division of Banking and Financial Institutions and allowed up to 60 days in which to perfect the application or provide additional information. An extension of this 60-day period may be obtained from the Division of Banking and Financial Institutions by showing good cause why it should be so extended. Each incorporator must subscribe and pay in full, in cash, for common stock in a combined minimum amount determined by the department. The incorporators must identify for the department any incorporator or subscriber that will hold more than 10% of capital stock.
- (5) The board may request additional information from an applicant if, in its discretion, additional information is needed to reach a decision on the application. Organizational expenses of any kind, including broker commissions to secure subscriptions, must not be paid from paid-in capital or surplus funds of the bank (or to the resulting deficit of the bank) without the prior approval of the department. Prior to filing an application for a certificate of authorization, incorporators must subscribe for shares or units in an amount the department deems adequate to pay all organizational expenses. Funds of incorporators must not be comingled with funds in any account into which non-incorporators deposit funds.
- (6) The department may require publication of notice of the application in the closest major newspaper of general circulation and an affidavit of publication following completion.
- (7) In determining whether an application is complete, the department may require a listing of subscribers showing that at least 80% of the stock has been subscribed.

**Authorizing statute(s):** ~~32-1-203~~, 32-1-218, 32-1-240, MCA

**Implementing statute(s):** ~~32-1-203~~, 32-1-240, MCA

### **Reasonable Necessity Statement**

The department is proposing to transfer and amend this rule to enhance clarity for organizers regarding the requirements and minimum thresholds necessary for forming a bank, as authorized by the 2023 legislature in 32-1-302 and 32-1-307, MCA, enacted through HB 138. These proposed changes are designed to ensure that bank organizers maintain sufficient capital and refrain from utilizing bank capital for organizational expenses that could potentially distort the pro formas reviewed by the department. The 10% requirement is consistent with 12 C.F.R. § 225.41 concerning change in control for banks and bank holding companies.

The department has the authority to mandate the publication of a notice regarding the application in a newspaper that has general circulation. Following this publication, an affidavit confirming the publication must be submitted. However, if the department determines that such notice is not necessary, it can choose to waive this requirement. This flexibility allows the department to tailor its approach based on the specific circumstances of each application.

### **2.60.301 (2.59.2205) PERSUASIVE SHOWING OF REASONABLE PUBLIC NECESSITY AND DEMAND**

- (1) In determining whether a reasonable public necessity and demand is established in any case, the ~~board~~ department ~~requires that these words be given a meaning which will~~ must assess the needs of the community as a whole and determine whether the proposed new depository bank will promote the public interest of the community as a whole in having a sound banking structure, reasonably competitive and adequate for the needs of the community and provide for a safe, sound, and reasonably competitive financial institution.
- (2) In making this determination the following are among the factors which the ~~board~~ department may consider:
  - (a) the number of banks already serving the area in which the proposed bank would locate;
  - (b) the size of the area;
  - (c) the population of the area;
  - (d) the wealth of residents of the area;
  - (e) the commercial and industrial development of the area;
  - (f) the socio-economic trends of the area;

- (g) the adequacy of the services being provided by existing banks compared to the needs of residents and the services to be offered by the proposed bank, including a detailed list of banking services that will be offered to the community to be served by the new bank;
- (h) the capability of existing banks to handle potential growth of the area;
- (i) the convenience of the location of existing banks to residents of the area as compared to the convenience of the proposed bank;
- (j) the size of financial institutions in the area;
- (k) the history of financial institutions in the area;
- (l) an indication of the support the proposed bank could reasonably expect to receive from representative segments of the businesses and residents of the area; and
- (m) the probability of the success of the proposed bank, including the backgrounds and expertise of management.

**Authorizing statute(s):** ~~32-1-203~~, 32-1-218, 32-1-240, MCA

**Implementing statute(s):** ~~32-1-203~~, 32-1-240, MCA

### **Reasonable Necessity Statement**

This rule establishes the criteria that the department will utilize to assess reasonable public necessity and demand, in accordance with the requirements outlined in 32-1-240(2) and (3), MCA. The department proposes to transfer and amend this rule to offer both organizers and the public clear evaluation criteria for new banks and to ensure that any new bank not only meets but also upholds the standards anticipated by the department and the public alike.

### **2.60.303 (2.59.2206) CAPITAL ADEQUACY OF A PROPOSED NEW DEPOSITORY BANKS**

- (1) The applicant must provide a reasonable assurances that the proposed new depository bank will have adequate initial paid-in capital sufficient to accomplish the following:
  - (a) establish an undivided profits account in an amount great enough to absorb initial operating losses under foreseeable business conditions;
  - (b) maintain total capital and surplus accounts of adequate size to permit the proposed investment in building, land, furniture, and fixtures within the limitation of 100% of capital and surplus as imposed by 32-1-423, MCA;

- (c) provide protection for depositors' funds to the same extent that the average of all insured commercial banks in the proposed depository bank's peer group provides capital protection, measured by the most current peer group data available on total capital accounts and reserves as a percentage of total assets. The proposed depository bank's reasonably estimated total assets at the end of its first three years of operation ~~shall~~ must be the basis upon which this standard ~~shall~~ will be projected; and
  - (d) to enable the depository bank to furnish competitive services that will ensure an amount of business sufficient to assure its success.
- (2) The applicant must provide sufficient initial capital of each proposed new depository bank to be sufficient for a tier 1 capital to assets leverage ratio of not less than 8 percent throughout the first three years of operation. In addition, the institution must maintain an adequate allowance for credit losses. The business plan should not assume, for the first three years of operation, any new or additional capital raises beyond the initial capital contributions made during the institution's organization phase. During the first three years of operation, cash dividends must be paid only from net operating income, and should not be paid until an appropriate allowance for credit losses has been established and overall capital is deemed adequate by the department. Applicants should not assume that the institution will make any dividend payments during this time frame.
- (3) Preferred or convertible preferred stock may not be issued without the prior approval of the department. If approved, preferred and convertible preferred stock may not be retired for a period of three years after commencement of bank operations without the prior approval of the department, in which case, the department may require the sale of additional common stock to remedy any impairment of capital.
- (4) A new depository bank must have a capital structure that the department deems safe, sound, and adequate based on the capital adequacy factors set forth in this rule.

**Authorizing statute(s):** 32-1-203, 32-1-218, 32-1-240, MCA

**Implementing statute(s):** 32-1-203, 32-1-423, 32-1-240, MCA

### **Reasonable Necessity Statement**

New (2) is based on the FDIC requirements for new depository banks. It gives guidance to incorporators of new depository banks as to the amount of capital that will be needed for the first three years of its existence, how it is calculated, and how it can be used. Incorporators must be prepared to not make a profit for the first three years, cover normal credit losses during that time, and still maintain capital sufficient to maintain operations, fund the

allowance, and cover expenses without the need to raise any additional capital. These requirements are in place as incorporators of new depository banks must be prepared to withstand the challenges of opening an insured depository institution without risking loss to the FDIC's insurance fund.

Section (3) is being proposed to protect capital at newly formed institutions.

Section (4) is updated to reflect that the capital structure submitted by the applicant must meet both short, intermediate, and long term adequacy standards in order to be approved.

#### **2.60.304 (2.59.2209) BANKS-- FDIC INSURANCE REQUIRED**

- (1) To comply with ~~32-1-203~~ 32-1-242, MCA, it has been determined by the ~~state banking board~~ department that it is in the public interest to require all commercial banks to be accepted by the Federal Deposit Insurance Corporation for the insurance of deposits. The ~~board~~ department will not ~~order the commissioner of banking and financial institutions to~~ issue a certificate of authorization to a proposed new bank unless:
  - (a) the ~~division of banking and financial institutions~~ department has received official notice that the proposed bank has been accepted for insurance of deposits; or,
  - (b) the ~~division of banking and financial institutions~~ department has received satisfactory assurance from the ~~FDIC~~ Federal Deposit Insurance Corporation or the Federal Reserve Bank of Minneapolis that the proposed bank will be accepted for insurance when the ~~proponents applicant~~ applicant ~~comply~~ complies with certain stated minor requirements imposed by the ~~FDIC~~ Federal Deposit Insurance Corporation. Such "minor requirements" must be of a type and character which the ~~board~~ department determines can be promptly complied with by the ~~proponents~~ applicant without serious difficulty.

**Authorizing statute(s):** ~~32-1-203, 32-1-218, 32-1-240~~, MCA

**Implementing statute(s):** ~~32-1-203, 32-1-242~~, MCA

#### **2.60.305 (2.59.2204) PRO FORMA STATEMENT**

- (1) An operational projection ~~shall~~ must be submitted as part of the application for ~~new~~ proposed new depository bank charters, in order to show that the new bank will remain solvent while meeting the requirements set forth in ~~ARM 2.60.303~~ 32-1-240

through 32-1-245, MCA, and [NEW RULE 3 (ARM 2.59.2203)]. The pro forma statement will include, at a minimum:

- (a) a projected three-year comparative balance sheet and income projection based on reasonable market conditions and a supportable business and marketing plan that addresses the factors in ARM 2.59.2205(2);
  - (b) information on start-up costs, including legal fees, and other costs that may be amortized; and
  - (c) costs associated with fixed assets and their maintenance.
- (2) The statement will reasonably estimate the volumes of business the new bank anticipates in the first three-year period, as supported by a business and marketing plan, and will show its reasons for believing it will develop such business aggregates.

**Authorizing statute(s):** ~~32-1-203~~, 32-1-218, 32-1-240, MCA

**Implementing statute(s):** ~~32-1-203~~, 32-1-240, MCA

### **Reasonable Necessity Statement**

The applicant is required to submit a pro forma statement to the department to demonstrate that it will maintain solvency during the initial three years of operation. This rule outlines the specific information that the department needs to effectively review applications and assess initial capitalization requirements, as detailed in 32-1-244 and 32-1-243(3), MCA, respectively.

The language in (2) is being updated to reflect that the projections should be based on reasonable market conditions and a supportable business and marketing plan.

### **2.60.501 (2.59.2208) A STATE BANK ORGANIZED FOR THE PURPOSE OF ASSUMING DEPOSIT LIABILITY OF ANY CLOSED BANK**

- (1) All provisions of ~~ARM 2.60.202 and 2.60.203, application procedures, apply except ARM 2.60.203(3), summary of evidence demonstrating reasonable public necessity and demand for a new bank. The provisions of ARM 2.60.302 through 2.60.304 also apply~~ 32-1-240 through 32-1-245, MCA, and ARM 2.59.2201 through 2.59.2209 are applicable.
- (2) Prior to submitting a bid for the assets and liabilities of a closed bank, organizers must:
  - (a) appoint a spokesperson who is empowered to speak for and sign documents on behalf of the organization;

- (b) have written verification in hand that capital for the new bank is on deposit and will be available prior to the new bank opening;
  - (c) have written verification of blanket bond coverage for the new bank; and
  - (d) provide all details of the proposed purchase arrangement along with a copy of the purchase and assumption agreement and other related documents required by the closed bank receiver.
- (3) ~~If the bidder for the closed bank contemplates using an existing state bank to acquire assets and assume liabilities of a closed bank only ARM 2.60.303 applies. Details of the proposed purchase along with a copy of the purchase and assumption agreement must be submitted to the department prior to submitting a bid for the closed bank.~~
- (4) ~~Details of the proposed purchase along with a copy of the purchase and assumption agreement must be submitted to the Division of Banking and Financial Institutions prior to submitting a bid for the closed bank.~~
- (5) ~~Approval of charter application under this rule will be accomplished through a telephone conference call with a quorum of the board participating.~~

**Authorizing statute(s):** ~~32-1-204, 32-1-218, 32-1-240, MCA~~

**Implementing statute(s):** ~~32-1-204, 32-1-240, MCA~~

### **Reasonable Necessity Statement**

Any state bank can bid on the assets and liabilities of a closed bank. The department and the FDIC will determine if the institution has sufficient capital, management, and liquidity to be the successful bidder for the assets and liabilities of the closed bank.

In order for a group of organizers to set up a shell bank for the purpose of acquiring the deposit liability of a closed bank, they must appoint someone who is empowered to speak for the proposed new bank. These applications must move quickly, and the department needs an individual who can promptly respond to questions about the application. In order to set up a shell bank, (2)(a), (b), and (c) must be in place before a new charter can be approved.

The last two items, (2)(d) and (3), must be provided to the department so that the department can work with the federal regulators and the new bank organizers to effectuate the purchase.

### **2.60.901 (2.59.2302) A STATE BANK ORGANIZED FOR THE PURPOSE OF BEING A SHELL BANK**

- (1) If a shell bank is being organized for the purpose of acquiring control of or acquiring all or substantially all of the assets of an existing bank or savings association, the organizers shall comply with 32-1-202 through 32-1-206 and 32-1-301 through 32-1-307, MCA, and the rules adopted thereunder. For a bank organized solely for the purpose of merging with, or otherwise acquiring, an existing bank or savings association is referred to as a shell bank in this subchapter. A shell bank charter may only be obtained for the purpose of merging an existing bank into the shell bank, or for the purpose of merging the shell bank into an existing bank. A shell bank has no authority to conduct banking business until the shell bank has completed a merger with an existing bank or savings association.
- (2) An application for a shell bank organized solely for the purpose of merging with an existing bank or savings association is governed by this subchapter. For a shell bank organized for the purpose of merging with, acquiring control of, or acquiring all or substantially all of the assets of an existing bank or savings association, including a mutual savings and loan association, the applicant must comply with 32-1-246, MCA, and the rules adopted thereunder.
- (3) A shell bank organized solely for the purpose of merging with an existing bank or savings association is referred to as an interim bank in this subchapter. An interim bank has no authority to conduct a banking business until merged with an existing bank or savings association. Upon approval of a complete application as stipulated in [ARM 2.60.902 (2.59.2303)], the department must issue to the applicant a certificate to organize the shell bank, and the applicant must file articles of incorporation of the shell bank with the department.
- (4) The provisions of this subchapter do not apply to a state bank organized for the purpose of assuming deposit liabilities of any closed bank governed by ARM 2.60.501. The minimum level of capital stock for a shell bank is \$5,000. The establishment of a paid-in capital account, contingent fund, or surplus is not required for a shell bank.
- (5) If the existing bank is the surviving charter in a merger or consolidation, the shell bank's capital stock may be canceled and transferred to the surplus of the surviving entity at the time of the merger or consolidation, or the stock of the surviving entity may be increased by the amount of the shell bank's capital stock through an amendment to the articles of incorporation of the existing bank.
- (6) If the shell bank is the surviving charter in the merger or consolidation, and the total assets of the combined entity is similar to that of the existing bank, the capital stock of the shell bank immediately following the merger or consolidation must, by an amendment to the articles of incorporation of the shell bank, be increased to an amount at least equal to the capital stock of the existing bank prior to the merger or consolidation.

- (7) If the shell bank is the surviving charter in the merger or consolidation, and the transaction results in a significant increase in total assets from what the existing bank reflects prior to the merger or consolidation, the capital stock of the shell bank immediately following the merger or consolidation must, by an amendment to the articles of incorporation of the shell bank, be increased to the greater of \$1,000,000 or the amount of capital stock of the existing bank immediately prior to the merger or consolidation.

**Authorizing statute(s):** 32-1-218, 32-1-246, 32-1-371, MCA

**Implementing statute(s):** ~~32-1-109~~, ~~32-1-204~~, ~~32-1-218~~, 32-1-246, MCA

### **Reasonable Necessity Statement**

The department proposes to transfer and amend this rule to outline the permitted purposes and uses of a shell bank, as well as the criteria and requirements that must be met under 32-1-246, MCA. It is essential to clearly define the limited purpose of a shell bank to ensure that existing banks understand the specific circumstances under which a shell bank may be utilized in transactions, reorganizations, or other corporate events.

### **2.60.902 (2.59.2303) APPLICATION PROCEDURES**

- (1) An application to form ~~an interim a~~ a shell bank must be ~~on the form in ARM 2.60.903~~ submitted to the department using the Shell Bank Charter Application form, April 30, 2025, version, located at [banking.mt.gov](http://banking.mt.gov).
- (2) ~~The application to form an interim bank must be filed with the department.~~
- ~~(3)~~(2) The At least 30 days prior to the effective date of any merger or business consolidation involving a shell bank, the applicant shall must publish a notice in a newspaper of general circulation in the community in which the main office of the proposed interim shell bank is to be located. If there is no such newspaper in the community, then in a the closest major newspaper of general circulation published nearest the community will suffice. The notice must run once a week for two consecutive weeks. The public notice must include:
- (a) the name of the proposed ~~interim~~ shell bank;
  - (b) a brief summary of the purpose of the ~~interim~~ shell bank; and
  - (c) a reference to ~~ARM 2.60.903~~ [2.60.901 (2.59.2302)], under which the proposed ~~interim~~ shell bank is to be formed; and.

- (d) ~~notice that interested persons are invited to comment on the application before the State Banking Board.~~
- (3) A nonrefundable application fee of \$10,000 must be paid to the department at the time of application.
- (4) The applicant shall must provide the affidavit of publication to the department after it is received.

**Authorizing statute(s):** 32-1-218, 32-1-246, MCA

**Implementing statute(s):** ~~32-1-109, 32-1-218, 32-1-246~~, MCA

### **Reasonable Necessity Statement**

This rule sets forth the application procedures for a shell bank, as required under 32-1-246, MCA. The department proposes to transfer and amend (2) to clarify that publication of the notice must be at least 30 days before the effective date of the merger of the shell bank with the existing institution to allow sufficient time for publication of the required two consecutive notices. The application fee in (3) is standard for new depository bank applications.

### **2.60.904 (2.59.2306) DECISION OF STATE BANKING BOARD THE DEPARTMENT; INCORPORATION**

- (1) ~~Approval of an application for an interim bank certificate of authority under this rule will be accomplished through a telephone conference call with a quorum of the board participating.~~ The department's approval of a shell bank must be specifically conditioned on:
  - (a) the department's approval of the subsequent merger; and
  - (b) the resulting bank being accepted for deposit insurance by the Federal Deposit Insurance Corporation, or providing satisfactory assurance from the Federal Deposit Insurance Corporation that the resulting bank will be accepted for insurance when the applicant complies with certain stated minor requirements imposed by the Federal Deposit Insurance Corporation. "Minor requirements" must be of a type and character that the department determines can be promptly complied with by the applicants without serious difficulty.
- (2) ~~The provisions of ARM 2.60.202 and 2.60.204(1) and (2) apply to an application for an interim bank certificate of authority.~~ Upon the department's approval of the shell bank application, the applicant must take the necessary steps to conform the

articles of incorporation and by-laws to the requirements of the department. The department must approve the articles and bylaws of the shell bank.

- (3) ~~Within two weeks after the conclusion of the hearing before the State Banking Board, the State Banking Board shall issue a decision as to whether to approve the application for the interim bank. This two-week period may be extended by two additional weeks if the State Banking Board or the department requires more time or information.~~
- (4) ~~The receipt and approval of the information in ARM 2.60.902 and 2.60.903 constitute sufficient authority for the State Banking Board to approve the issuance of a certificate of authorization to the interim bank.~~
- (5) ~~The State Banking Board may require additional information as it sees fit from an applicant before approving the application.~~
- (6) ~~The State Banking Board's approval shall be specifically conditioned on:~~
  - (a) ~~the commissioner's approval of the subsequent merger; and~~
  - (b) ~~the new institution being accepted for deposit insurance by the Federal Deposit Insurance Corporation.~~
- (7) ~~Upon the State Banking Board's approval of the interim bank application, the incorporator shall take the necessary steps to conform the articles of incorporation and by-laws to the requirements of the State Banking Board. The commissioner shall approve the articles and the department shall then file the necessary documents with the Secretary of State.~~

**Authorizing statute(s):** 32-1-218, 32-1-246, MCA

**Implementing statute(s):** ~~32-1-109, 32-1-202, 32-1-204, 32-1-205, 32-1-218, 32-1-302~~32-1-246, MCA

### **Reasonable Necessity Statement**

The department proposes to transfer and amend this rule to establish the approval requirements for shell banks, as mandated by 32-1-246, MCA. These rules create the framework for the department to review and approve applications to ensure that shell banks are utilized appropriately and meet all required state and federal banking guidelines.

### **2.60.905 (2.59.2309) POWERS OF INTERIM A SHELL BANK BEFORE MERGER**

- (1) ~~An interim~~ Prior to completing a merger, a shell bank may take only those corporate and fiduciary steps and actions reasonably incidental and necessary to facilitate and complete the merger. Such limitation does not preclude the ~~State Banking Board department~~ from ~~ordering the department to grant~~ granting a certificate of authorization, and to otherwise facilitate and authorize the formation and incorporation of the ~~interim~~ shell bank. Following a merger, the shell bank, to the extent it survives as the resulting bank, will have the powers of a state bank under Title 32, MCA, as applicable.

**Authorizing statute(s):** 32-1-218, 32-1-246, MCA

**Implementing statute(s):** 32-1-109, 32-1-218, 32-1-246, MCA

### **Reasonable Necessity Statement**

The department proposes to transfer and amend this rule to establish additional criteria for the formation of a shell bank, as required by 32-1-246, MCA. It explicitly prohibits the operation of a shell bank as a deposit-taking bank unless it has successfully completed a merger or another transaction with an existing regulated bank.

### **2.60.906 (2.59.2310) PROOF OF MERGER: REVOCATION OF CERTIFICATE OF AUTHORIZATION**

- (1) From the date an ~~interim~~ shell bank is authorized according to this rule, the parties to the ~~interim~~ shell bank merger agreement have six months in which to effect the merger with the existing bank or savings association. The merger must proceed under 32-1-370 or 32-1-371, MCA.
- (2) The department may grant extensions if the parties to the ~~interim~~ shell bank agreement show good cause as to why an extension is needed to complete the merger.
- (3) The department may cancel or revoke the certificate of authorization of the ~~interim~~ shell bank (and may take such other steps as are appropriate at any time) if:
  - (a) proof of the merger between the ~~interim~~ shell bank and the existing bank or savings association has not been provided to the department at the end of the authorized time;
  - (b) the ~~interim~~ shell bank actually conducts any banking business prior to its proposed merger; or
  - (c) any related merger or consolidation application is denied or withdrawn.

**Authorizing statute(s):** 32-1-218, 32-1-246, MCA

**Implementing statute(s):** ~~32-1-218, 32-1-502,~~ 32-1-246, MCA

### **Reasonable Necessity Statement**

The department proposes to transfer and amend this rule to clarify that an interim bank means a shell bank.

### **ADOPT**

The rules proposed to be adopted are as follows:

#### **NEW RULE 1 (2.59.144) REPORT OF SERVICE AND TECHNOLOGY PROVIDERS**

- (1) A state-chartered bank must file with the department a Report of Service and Technology Providers form, April 30, 2025, version, located at [banking.mt.gov](http://banking.mt.gov).

**Authorizing statute(s):** 32-1-218, 32-1-233, MCA

**Implementing statute(s):** 32-1-233, MCA

### **Reasonable Necessity Statement**

The 2023 Montana Legislature amended 32-1-233, MCA, in House Bill 138, to require banks to file with the department an annual report of service and technology providers. House Bill 138 was signed by the Governor on February 28, 2023, and the section pertaining to the adoption of this proposed rule became effective on October 1, 2023.

The department proposes adopting this rule to provide banks with a form to notify the department about the existence of a service and/or technology provider relationship.

#### **NEW RULE 2 (2.59.2201) DEFINITIONS**

The following definition applies to rules within this subchapter:

- (1) “Depository bank” means a bank as defined in:
  - (a) 32-1-105, MCA;
  - (b) 32-1-106, MCA;

- (c) 32-1-107, MCA, if the bank engages in one or more of the purposes set forth in 32-1-107(1), (7), or (9), MCA; or
- (d) 32-1-108, MCA.

**Authorizing statute(s):** 32-1-218, 32-1-240, MCA

**Implementing statute(s):** 32-1-102, 32-1-105, 32-1-106, 32-1-107, 32-1-108, MCA

### **NEW RULE 3 (2.59.2203) APPLICATION CONTENTS**

- (1) In order to comply with 32-1-242, MCA, the applicant must submit:
  - (a) the purpose of the proposed bank;
  - (b) the proposed location of the initial principal place of business;
  - (c) the class or classes of stock proposed to be issued, the proposed offering price per share, and the aggregate dollar amount of the proposed initial paid-in capital and justification for the amount of initial paid-in capital;
  - (d) the proposed name of the institution;
  - (e) the names and resumes of the proposed senior officers and the initial directors, at least three of whom must also be among the incorporators;
  - (f) the residential addresses and occupations of the proposed incorporators and directors;
  - (g) the proposed articles of incorporation and bylaws of the institution;
  - (h) the number of shares of voting stock proposed to be subscribed for by the incorporators and each of the proposed directors and senior officers, and the names and resumes of any other persons who are expected to subscribe for, to own or to control more than 10 percent of the voting stock and the amount of stock for which each proposes to subscribe;
  - (i) evidence of the character, financial responsibility, and ability of the incorporators, directors, senior officers, and owners;
  - (j) evidence, in the form of a business plan and such additional information as the department may require, demonstrating that the proposed banking institution is likely to be financially successful;
  - (k) the proposed policies of the banking institution;

- (l) a statement as to whether the banking institution is to be a Montana commercial bank, a savings bank, a trust company, or an investment company and, if the proposed Montana commercial bank or savings bank is applying for trust powers, a statement to that effect; and
  - (m) any other information that the department may require.
- (2) The department may request additional information from an applicant if, in its discretion, additional information is needed to reach a decision on the application.

**Authorizing statute(s):** 32-1-218, 32-1-240, MCA

**Implementing statute(s):** 32-1-240, 32-1-242, MCA

### **Reasonable Necessity Statement**

The department proposes to adopt this rule to provide the application requirements to create a new bank that meets all state and federal guidelines and that prioritizes consumer protection. To initiate the chartering process, as outlined in 32-1-240(2), MCA, the department requires specific information from prospective banks.

### **NEW RULE 4 (2.59.2206) INSTITUTION NAME**

- (1) The name of a financial institution may not contain any word or phrase that indicates or implies that the institution is organized for any purpose other than one or more of the purposes contained in the institution's articles of incorporation.
- (2) The name of the financial institution must be distinguishable from:
  - (a) the name or reserved name of any domestic or foreign financial institution registered with the Secretary of State;
  - (b) the name or reserved name of any corporation, professional corporation, nonprofit corporation, cooperative, limited liability company, limited partnership, or business trust currently on file with the Secretary of State; or
  - (c) any reserved, registered, or assumed business name currently on file with the Secretary of State.
- (3) The department may refuse to permit a banking institution to use any name the director determines is not distinguishable from the name of a financial institution that is already lawfully engaging in banking business or making loans in this state.

- (4) A banking institution may transact business under one or more assumed business names if the assumed business names meet the requirements of this rule.

**Authorizing statute(s):** 32-1-218, 32-1-240, MCA

**Implementing statute(s):** 32-1-240, 32-1-242, MCA

#### **Reasonable Necessity Statement**

The department proposes to adopt this rule to establish additional requirements aimed at fostering a safe and sound banking institution that prioritizes consumer protection. This rule is specifically designed to safeguard consumers and alleviate confusion within the banking system. This rule aids the department in interpreting 32-1-242(1)(g), MCA. The implementation of this rule is mandated under 32-1-240(3), MCA.

#### **NEW RULE 5 (2.59.2207) FINGERPRINTING**

- (1) The department may require any person listed in 32-1-241, MCA, to submit to fingerprints for submission to the Federal Bureau of Investigation as well as a consent to a background check.

**Authorizing statute(s):** 32-1-218, 32-1-241, MCA

**Implementing statute(s):** 32-1-241, MCA

#### **Reasonable Necessity Statement**

The department proposes to adopt this rule to clearly outline the investigative requirements and the required consent of the organizers to complete the process of establishing a new bank. This rule is essential to ensure that all organizers are deemed fit to manage and oversee a bank in Montana, thereby safeguarding the integrity and stability of our financial institutions. The adoption of this rule is mandated under 32-1-241(1), MCA.

#### **NEW RULE 6 (2.59.2304) DEPARTMENT TO REVIEW APPLICATION**

- (1) The department must ensure that sufficient information has been submitted to determine whether:

- (a) the character, financial responsibility, and general fitness of the owners and managers of the proposed bank command the confidence of the community in which the proposed bank is to be located and warrant the belief that the business of the proposed corporation will be honestly and efficiently conducted;
  - (b) the proposed directors and officers are competent to successfully manage a bank; and
  - (c) the corporate name assumed by the proposed bank, by reason of the use of any one or more of the words "bank," "banker," "banking," "trust," "savings," or "investment" in conjunction with any other word or words, resembles so closely the name of any other bank previously formed under this chapter as to be likely to cause confusion.
- (2) The department must approve or deny the application within 60 days from receipt of the application unless the department requests more information. The applicant or other entity or person must have 60 days to provide the requested information to the department. Following the receipt of all requested additional information and a complete application, the department may extend its review by a one-time 30-calendar day period.

**Authorizing statute(s):** 32-1-218, 32-1-246, MCA

**Implementing statute(s):** 32-1-246, MCA

### **Reasonable Necessity Statement**

The department proposes to adopt this rule to clearly outline the review standards it will employ when evaluating applications to form new banks, as mandated by 32-1-242(2), MCA. This rule is designed to specify the type and quality of information that the department deems sufficient for consideration. Additionally, it will establish the processing timelines associated with these applications, ensuring transparency and efficiency in the review process.

### **NEW RULE 7 (2.59.2305) AUTHORITY TO REQUIRE ADDITIONAL INVESTIGATORY INFORMATION - FINGERPRINTING**

- (1) The department may investigate any person named in the application or in other documents submitted for filing. The department may require the person to provide additional information for the department's further inquiry.
- (2) For the purpose of further inquiry, the department may require any individual named in the proposed articles of incorporation of the bank or documents submitted for filing as a prospective incorporator, director, president, or officer of

the bank to submit fingerprints for submission to the Federal Bureau of Investigation and any governmental agency or entity authorized to receive information for a state, national, and international criminal history background check.

**Authorizing statute(s):** 32-1-218, 32-1-246, MCA

**Implementing statute(s):** 32-1-246, MCA

### **Reasonable Necessity Statement**

The department proposes to adopt this rule to clearly outline its requirements and obligations in thoroughly investigating individuals who seek to organize a bank. This rule is rooted in the necessity to ensure that all organizers meet the necessary standards of integrity and competence. Specifically, as provided in 32-1-241(1), MCA, this rule grants the department the authority to conduct comprehensive inquiries into the backgrounds of these organizers.

### **NEW RULE 8 (2.59.2307) GROUNDS FOR DENYING AN APPLICATION**

- (1) The department may deny an application on a finding that any person named in the application to organize or in other documents submitted for filing:
  - (a) is insolvent, either in the sense that the person's liabilities exceed the person's assets or that the person cannot meet the person's obligations as they mature, or is in a financial condition in which the person cannot continue in business with safety to the person's customers;
  - (b) has engaged in dishonest, fraudulent, or illegal practices or conduct in any business or profession;
  - (c) has willfully or repeatedly violated or failed to comply with any provisions of the Bank Act or any rule or order of the department;
  - (d) has been convicted of any felony or a misdemeanor, if an essential element of the crime is fraud or dishonesty;
  - (e) is not qualified to conduct a banking business on the basis of factors such as training, experience, and knowledge of the business;
  - (f) is permanently or temporarily enjoined by a court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the banking business or other business that may lawfully be conducted by an insured institution;

- (g) is the subject of an order of the department subjecting the person to a civil penalty or removing the person from an office in any entity regulated by the department; or
- (h) is the subject of an order directing the person to cease and desist from any fraudulent or unlawful business or banking practice, subjecting the person to a civil penalty, or removing the person from an office in a financial institution or a consumer finance company issued by a state, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or any other agency of the federal government or another state with regulatory authority over financial institutions or consumer finance companies.

**Authorizing statute(s):** 32-1-218, 32-1-240, 32-1-246, MCA

**Implementing statute(s):** 32-1-246, MCA

#### **Reasonable Necessity Statement**

The department proposes to adopt this rule in accordance with 32-1-240(3), MCA, which outlines the necessary grounds for denying an application or an individual organizer or organizers seeking to form a new bank. This rule is essential not only for maintaining the integrity of the banking system but also for safeguarding consumers.

#### **NEW RULE 9 (2.59.2308) ADDITIONAL REQUIREMENTS AFTER APPROVAL OF APPLICATION**

- (1) Following approval of the application, the incorporators must:
  - (a) file a signed original of the articles of incorporation with the department for filing with the Secretary of State and pay the filing fee;
  - (b) provide acceptable proof that the capital of the institution has been placed into escrow; and
  - (c) provide proposed bylaws that comply with Montana law to the department for review and approval.

**Authorizing statute(s):** 32-1-218, 32-1-246, MCA

**Implementing statute(s):** 32-1-246, MCA

## **Reasonable Necessity Statement**

The department proposes to adopt this rule to establish the administrative requirements necessary for the formation of a bank in accordance with 32-1-245, MCA. It specifically outlines the documents that the department will require after the approval of a new bank. This regulation is mandated under 32-1-240(3), MCA.

## **NEW RULE 10 (2.59.2401) DEFINITIONS**

The following definition applies to rules within this subchapter:

- (1) “Nondepository trust company bank” means a bank as defined in 32-1-107, MCA, that engages in one or more of the purposes set forth in 32-1-107(2), (3), (4), (5), (6), or (8), MCA.

**Authorizing statute(s):** 32-1-218, 32-1-240, MCA

**Implementing statute(s):** 32-1-102, 32-1-105, 32-1-106, 32-1-107, 32-1-108, MCA

## **NEW RULE 11 (2.59.2402) CAPITAL ADEQUACY OF A NONDEPOSITORY TRUST COMPANY BANK**

- (1) The department may not issue a charter to a nondepository trust company bank having initial capital of less than \$2 million.
- (2) The department may, on a case-by-case basis, require additional capital, or the deposit of securities in the amount and types as directed by the department, for a proposed or existing nondepository trust company bank if the department finds the condition and operations of the existing nondepository trust company bank or the proposed scope or type of operations of the proposed nondepository trust company bank requires additional capital or securities to protect the safety and soundness of the institution. The safety and soundness factors to be considered by the department in the exercise of discretion include:
  - (a) the nature and type of business the nondepository trust company bank conducts or proposes to conduct;
  - (b) the nature and degree of liquidity in assets held or to be held in a corporate capacity;

- (c) the amount, type, and depository of fiduciary assets that the nondepository trust company bank manages or proposes to manage;
- (d) the complexity of the nondepository trust company bank's fiduciary duties or proposed fiduciary duties and degree of discretion undertaken;
- (e) the competence and experience of the nondepository trust company bank's management or proposed management;
- (f) the extent and adequacy of internal controls maintained or to be maintained by the nondepository trust company bank;
- (g) the presence or absence of annual unqualified audits by an independent certified public accountant, if applicable;
- (h) the reasonableness of the nondepository trust company bank's business plans for retaining or acquiring additional restricted capital; and
- (i) the existence and adequacy of insurance obtained or held, or to be obtained or held, by the nondepository trust company bank to protect its clients, beneficiaries, and grantors.

**Authorizing statute(s):** 32-1-218, 32-1-240, MCA

**Implementing statute(s):** 32-1-102, 32-1-105, 32-1-106, 32-1-107, 32-1-240, 32-1-242, MCA

### **Reasonable Necessity Statement**

NEW RULE 11 is based on other states' rules for capital adequacy for institutions that do not accept money on deposit. Since nondepository trust company banks do not accept money on deposit, they are not FDIC insured. Because these institutions are not FDIC-insured, the department must be able to require corporations acting in a fiduciary capacity to either inject additional capital or deposit securities with the department for the protection of the clients, beneficiaries, and grantors. If an institution does not have sufficient capital, the temptation is to spend monies held in trust. This jeopardizes not only the future of the institution but also the funds of clients, beneficiaries, and grantors. The department, not the FDIC, will be responsible to liquidate a state nondepository trust company bank that fails. Liquidating a failed institution is costly and time consuming. It requires hiring specialized experts to marshal, appraise, and sell assets, prepare the accounting and collect on debts owed to the institution, and settle claims against the institution. The department does not have the budget or personnel to cover the resources needed to liquidate a failed financial institution so the institution must have adequate capital or securities on deposit with the department at all times.

Initial capitalization of \$2 million is the minimum necessary capitalization for a nondepository trust company bank at this time. However, the department must have discretion to require additional capital or for securities to be deposited with the department as necessary to ensure the safety and soundness of the institution based on the factors listed in (2) whether at initial set up or at any time during the life of the institution. This ensures that nondepository trust company banks remain well capitalized throughout the life of the institution.

## **REPEAL**

The rules proposed to be repealed are as follows:

### **2.59.908 TEMPORARY EMERGENCY CLOSURE OF BRANCH**

**Authorizing statute(s):** 32-1-211, 32-1-218, MCA

**Implementing statute(s):** 32-1-211, 32-1-218, 32-1-561, 32-1-562, 32-1-563, 32-1-564, 32-1-565, MCA

### **2.59.909 EMERGENCY CLOSURE OF BRANCH**

**Authorizing statute(s):** 32-1-211, 32-1-218, MCA

**Implementing statute(s):** 32-1-211, 32-1-218, 32-1-561, 32-1-562, 32-1-563, 32-1-564, 32-1-565, MCA

### **2.59.1901 EXAMINATION FEES**

**Authorizing statute(s):** 32-11-105, MCA

**Implementing statute(s):** 32-11-203, MCA

## **Reasonable Necessity Statement**

The 2023 Montana Legislature repealed the Business and Industrial Development Corporations Act in Chapter 13, Laws of 2023 (Senate Bill 35). Senate Bill 35 was signed by the Governor on

February 16, 2023, and was effective on passage and approval. ARM 2.59.1901 is the only administrative rule under the Business and Industrial Development Corporations Act.

#### **2.60.101 ORGANIZATION OF BOARD**

**Authorizing statute(s):** Sec. 32-1-203, MCA

**Implementing statute(s):** Sec. 2-4-201, MCA

#### **2.60.201 PROCEDURAL RULES**

**Authorizing statute(s):** 32-1-203, MCA

**Implementing statute(s):** 2-4-201, MCA

#### **2.60.202 INVESTIGATION RESPONSIBILITY**

**Authorizing statute(s):** 32-1-203, MCA

**Implementing statute(s):** 32-1-203, MCA

#### **2.60.204 PROCEDURAL RULES FOR DISCOVERY AND HEARING**

**Authorizing statute(s):** 32-1-203, MCA

**Implementing statute(s):** 32-1-203, MCA

#### **2.60.302 MANAGEMENT OF PROPOSED BANK**

**Authorizing statute(s):** 32-1-203, MCA

**Implementing statute(s):** 32-1-203, MCA

## **2.60.903 APPLICATION TO FORM AN INTERIM BANK**

**Authorizing statute(s):** 32-1-218, MCA

**Implementing statute(s):** 32-1-109, 32-1-218, MCA

### **Reasonable Necessity Statement**

The department proposes to repeal this rule, as a new standardized form, the Shell Bank Charter Application, is being proposed in this notice under ARM 2.59.2303(1), which is being transferred from ARM 2.60.902.

## **2.60.907 FEES**

**Authorizing statute(s):** 32-1-218

**Implementing statute(s):** 32-1-109, 32-1-218, MCA

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### **Small Business Impact**

The department adopts rules that primarily impact credit unions, banks, and other financial institutions and works in cooperation with these entities across the state to implement the rules that are adopted. Given that the department does not work directly with small businesses, the small business impact analysis performed as required by 2-4-111, MCA indicates that no small businesses are likely to be directly impacted by the proposed rule changes.

There will be a fiscal impact to banks upon adoption of the following proposed rules:

1. ARM 2.60.907: The department is proposing to repeal ARM 2.60.907 which includes a nonrefundable fee of \$1,000 for shell bank applications. The department has only received one shell bank application in the past 10 years.
2. ARM 2.59.134(4): The department is proposing to amend this rule to include a nonrefundable fee of \$1,500 for conversion applications, specifically national banks converting to a state bank. The department has received four conversion applications of this type since 2011.
3. ARM 2.60.203(2) (2.59.2202): The department is proposing to amend this rule to clarify that the application fee is nonrefundable. This is consistent with the other rules in the Bank Act pertaining to application fees. The department has not had a situation in which a bank application was withdrawn resulting in the forfeiture of the application fee to the department.

4. ARM 2.60.902 (2.59.2304): The department is proposing to amend this rule to include a nonrefundable fee of \$10,000 for new depository bank applications. The department has not received a new depository bank application since 2006.

Documentation of the small business impact analysis is available upon request.

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### **Bill Sponsor Notification**

The department notified Senator Dan Salomon via email and regular USPS mail on July 9, 2025, of its intention to work on the substantive content and the wording of a proposal notice for rules that initially implements legislation, specifically SB 35 from the 2023 legislative session.

The department also notified Representative Tom Welch on July 1, 2025, via email of its intention to work on the substantive content and the wording of a proposal notice for rules that initially implements legislation, specifically HB 138 from the 2023 legislative session.

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### **Interested Persons**

The department 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 must 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. Written requests may be mailed or delivered to the contact person listed in this notice or may be made by completing a request form at any rules hearing held by the department.

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### **Rule Reviewer**

Don Harris, Chief Legal Counsel

### **Approval**

Misty Ann Giles