

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF PROPOSED
2.59.111 pertaining to retention of bank) AMENDMENT
records)
) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Concerned Persons

1. On July 28, 2014, the Department of Administration proposes to amend the above-stated rule.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration no later than 5:00 p.m. on July 17, 2014, to advise us of the nature of the accommodation that you need. Please contact Wayne Johnston, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2918; TDD (406) 444-1421; facsimile (406) 841-2930; or e-mail to banking@mt.gov.

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

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) ~~schedule Bank Records Publication Appendix "A"~~ establishes the minimum period for retention of bank records other than those specified in 32-1-491, MCA. ~~Bank Records Publication Appendix "A"~~ is maintained by the Commissioner of Banking and Financial Institutions, and may be updated at ~~regular intervals~~ not more than once a year by the commissioner. The ~~December 11, 2006~~ June 2, 2014, edition of the ~~Bank Records Publication Appendix "A"~~ is incorporated by reference as part of this rule. A copy of ~~this document~~ 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 at <http://banking.mt.gov/bank.mcp>.

(3) When a bank microfilms, ~~or~~ photographs, or uses other electronic or computer-generated data records in the regular course of business as permitted by 32-1-492 through 32-1-494, MCA, the retention period of the microfilm, photographs, electronic, or computer-generated data must be the same as specified in ~~the Bank Records Publication Appendix "A"~~.

(4) Banks ~~must~~ shall comply with all applicable federal banking laws and regulations requiring specific retention periods for the records enumerated in those laws or regulations. ~~In the event that a~~ If an applicable federal banking law or

regulation concerning record retention conflicts with a retention period contained in ~~Bank Records Publication Appendix "A", 32-1-491, MCA, this rule, or Appendix A,~~ a bank ~~must~~ shall comply with whichever retention period is longer. Banks ~~must~~ shall 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 ~~Bank Records Publication Appendix "A",~~ but maintains similar records with equivalent information, the bank's similar records must be retained for the time set forth for records specified within Bank Records Publication in Appendix "A" as to the equivalent records.

(6) Records not covered by this rule or 32-1-491, MCA, ~~are to~~ must be retained for a period of time determined appropriate by the bank's board of directors. ~~Such retention~~ Retention periods determined appropriate ~~shall be noted by the board~~ must be maintained 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, or demand deposit accounts, certificates of deposit, safety deposit boxes, and trust accounts, Negotiable Order of Withdrawal (NOW) accounts, and money market deposit accounts.

AUTH: 32-1-491, MCA

IMP: 32-1-218, 32-1-491, 32-1-492, MCA

STATEMENT OF REASONABLE NECESSITY: The publication entitled "Record Retention Periods for Montana State-Chartered Banks Appendix "A" to Montana Administrative Rule 2.59.111 Retention of Bank Records," commonly referred to as Appendix A, December 11, 2006, edition, was revised by the department effective June 2, 2014. The department believes that banks may be relying upon Appendix A as their primary source of record retention information and that there may be confusion relating to the applicable retention period for customer account records because those records are governed by 32-1-491, MCA, and ARM 2.59.111(1) and (7), rather than by Appendix A. A notice to that effect has been included in Appendix A and links to 32-1-491, MCA, and ARM 2.59.111 have been added to the appendix. The revisions also delete from Appendix A information that duplicates parts of ARM 2.59.111 or creates ambiguity when read in conjunction with the rule. The revisions clarify that the retention periods contained in Appendix A are not mere guidance but are mandatory unless longer retention periods are required under applicable federal banking laws or regulations. The revisions include shortening the name of the publication to "Bank Record Retention Periods – Appendix A to ARM 2.59.111" for ease of reference. The adoption date for the revised Appendix A was changed to June 2, 2014.

Based on the changes to the appendix, ARM 2.59.111 must be amended to use the correct name of the publication throughout the rule and incorporate the June 2, 2014 edition of the publication by reference in (1). It is necessary to delete the term "regular intervals" in (1) because the Appendix A is updated on an as-needed basis rather than on a regular schedule. It has been more than seven years since Appendix A was last updated but the publication may need to be updated again before another seven years elapse due to ongoing information technology

developments, changes in the standardized forms used in the banking industry, and changes in applicable federal banking laws and regulations regarding records requirements.

It is necessary to amend (4) to clarify and limit the federal laws and regulations included within the scope of (4). In addition, amendment of (4) is needed to clarify which record retention period governs in the event of a conflict between applicable state and federal laws and regulations regarding records retention requirements.

Section (7) requires amendment to add two common customer deposit account products to the definition of "customer accounts" and to clarify that the types of deposit accounts included in the definition are not exhaustive. The amendments to (7) are also needed to clarify that the types of deposit accounts included in the definition of "customer accounts" do not have common or wholly consistent characteristics that would enable all of them to be classified collectively for any purpose other than records retention. An amendment is also being made to add a web address for the convenience of the public as an additional means of obtaining a copy of Appendix A.

The remaining changes are being made to simplify the language and to comply with drafting convention.

4. Concerned persons may present their data, views, or arguments concerning the proposed action to Lorraine Schneider, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; or e-mailed to banking@mt.gov; and must be received no later than 5:00 p.m., July 25, 2014.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to the person listed in 4 above no later than 5:00 p.m., July 25, 2014.

6. If the Division of Banking and Financial Institutions receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be six persons based on the 56 existing state-chartered banks.

7. An electronic copy of this proposal notice is available through the department's web site at <http://doa.mt.gov/administrativerules.mcp>. The department strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that if a discrepancy exists between the official printed text of the notice and the electronic version of the notice, only the official printed text will be

considered. In addition, although the department works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

8. The Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request that includes the name and mailing address and e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written requests may be mailed or delivered to Wayne Johnston, Division of Banking and Financial Institutions, 301 S. Park, Ste. 316, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to banking@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. The department has determined that under 2-4-111, MCA, the proposed rule amendment will not significantly and directly affect small businesses.

By: /s/ Sheila Hogan
Sheila Hogan, Director
Department of Administration

By: /s/ Michael P. Manion
Michael P. Manion, Rule Reviewer
Department of Administration

Certified to the Secretary of State June 16, 2014.