

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF PROPOSED
2.59.104, 2.59.111, 2.59.125, 2.59.901,) AMENDMENT
2.59.1101, 2.59.1102, and 2.59.1603)
pertaining to semiannual assessment,) NO PUBLIC HEARING
retention of bank records, definitions,) CONTEMPLATED
change in location, application and)
review procedures, and state, county,)
and municipal issues for banks)

TO: All Concerned Persons

1. On November 21, 2016, the Department of Administration proposes to amend the above-stated rules.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration no later than 5:00 p.m. on November 7, 2016, 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) 841-2974; facsimile (406) 841-2930; or e-mail to banking@mt.gov.

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

2.59.104 SEMIANNUAL ASSESSMENT (1) remains the same.

(2) The fee is calculated based on the total assets of the bank ~~using the table below multiplied by .0000375, plus the flat fee listed below. The fee is then multiplied by the factor of 1.50 and rounded to the next highest dollar to determine the assessment due for the semiannual period.~~

Total Assets (\$ Million)	Base Fee (\$)	Plus Rate per Dollar	Over (\$ Million)
0-1	0	0.00085	0
1-10	850	0.000105	1
10-50	1,795	0.000085	10
50-100	5,195	0.00005	50
over 100	7,695	0.00003	100

<u>Total Assets</u>	<u>Flat Fee (\$)</u>
<u>\$0 to \$50 million</u>	<u>\$0</u>
<u>Over \$50 to \$100 million</u>	<u>\$3,000</u>
<u>Over \$100 to \$250 million</u>	<u>\$5,000</u>
<u>Over \$250 million to \$1 billion</u>	<u>\$7,500</u>
<u>Over \$1 billion</u>	<u>\$15,000</u>

~~Example: Bank A reports total assets of \$8.2 million. Bank A's total assessment is \$2409, based on a base fee of \$850 plus \$756 ($\$7.2 \text{ million} \times 0.000105 = \1606) $\times 1.5$. Bank A reports total assets of \$58,873,000 $\times .0000375$ plus \$3,000 equals \$5,207.74.~~

~~(3) remains the same.~~

~~(4) No fee will be charged for the June 30, 2016, semiannual assessment. This section sunsets August 31, 2016.~~

AUTH: 32-1-213, 32-1-218, MCA

IMP: 32-1-213, 32-1-218, MCA

GENERAL STATEMENT OF REASONABLE NECESSITY: As part of its required biennial review of rules, the Department of Administration has identified necessary changes identified in these proposed amendments.

STATEMENT OF REASONABLE NECESSITY: The division tries to keep its banking assessments in proportion to the costs it spends on supervising Montana banks. However, since 2012, there have been changes in the banking industry and changes at the division that have made budgeting and planning particularly difficult.

The banking industry has gone through the housing crisis and the banking crisis, which resulted in a dramatic increase in regulatory burden and regulatory costs. In many cases, these costs outstrip the ability of small institutions to cover them. This has resulted in an environment in which many institutions are seeking either to merge or be merged.

The division has experienced the retirement of several senior staff members.

The combination of these events, and the division's desire to match its income to its expenses, resulted in the following reductions to the bank assessments:

- 2012 - 50% cut in the June assessment;
- 2013 - 50% cut in the June assessment;
- 2014 - 50% cut in the December assessment;
- 2015 - 100% cut in the June assessment; and
- 2016 - 100% cut in the June assessment.

The division has been promising for several years now that it would review the income it brings in from fees and the expenses of supervision and revise the

assessment formula. It has now done so and is proposing this rule to more closely match expected revenues and expenses.

It derived the formula by determining the expenses of supervision of the existing state-chartered banks at current levels and divided those expenses as evenly as possible among the state-chartered banks.

The flat fee is being imposed because larger institutions require more supervisory time than smaller institutions, and the flat fee is designed to reflect that. There are currently 49 state-chartered banks in Montana. If we use the total assets of these banks as of December 31, 2015, the proposed rule will result in a reduction of revenues to the division of approximately \$595,000 annually. The amount that each bank will pay is an individual calculation based on the total assets of the bank on the date of calculation. Overall, banks will pay less in assessments, but since the assessment is an individual calculation for each financial institution, assessments may vary.

2.59.111 RETENTION OF BANK RECORDS (1) and (2) remain the same.

(3) When a bank ~~microfilms, photographs, or uses other electronic or computer-generated data~~ 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 ~~microfilm, photographs, electronic, or computer-generated data~~ reproduced records ~~is must~~ be the same as specified in Appendix A.

(4) through (7) remain the same.

AUTH: 32-1-491, MCA

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

STATEMENT OF REASONABLE NECESSITY: The division is amending this rule to update the wording to commonly used, current language, to reflect the current methods of document reproduction and to make the wording more concise.

2.59.125 DEFINITIONS APPLICABLE TO DERIVATIVE TRANSACTIONS AND SECURITIES FINANCING TRANSACTIONS (1) through (3)(a)(iii) remain the same.

(iv) advance funds under a standby letter of credit, as defined in 12 CFR 32.2(~~dd~~)(ee) and 12 CFR 208.24, a put, or other similar arrangement.

(3)(b) through (15) remain the same.

AUTH: 32-1-432, MCA

IMP: 32-1-432, MCA

STATEMENT OF REASONABLE NECESSITY: The division is amending this rule to correct a citation. The citation, 12 CFR 32.2(dd), has been moved since this rule was adopted. The correct citation now is 12 CFR 32.2(ee).

2.59.901 CHANGE OF LOCATION (1) remains the same.

AUTH: ~~32-1-203~~, 32-1-372, MCA

IMP: ~~32-1-202~~, 32-1-372, MCA

STATEMENT OF REASONABLE NECESSITY: This amendment is necessary to reflect the correct authority and implementation citation, 32-1-372, MCA, which pertains to branch banks in this state.

2.59.1101 APPLICATION PROCEDURE FOR APPROVAL TO ESTABLISH A NEW BRANCH BANK (1) through (6) remain the same.

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

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

STATEMENT OF REASONABLE NECESSITY: This amendment is necessary to reflect the correct authority and implementation citations pertaining to branch banks in this state.

2.59.1102 REVIEW PROCEDURE FOR APPLICATIONS FOR APPROVAL TO ESTABLISH A NEW BRANCH BANK (1) The division shall process applications ~~Applications~~ for new branch banks ~~will be processed~~ in the order in which they are received by the ~~Division of Banking and Financial Institutions~~. If an application is incomplete, the division shall notify the applicant ~~will be notified~~ by ~~telefax or mail~~ 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 may request additional information from an applicant even if the application is considered complete.

(2) through (7) remain the same.

AUTH: 32-1-372, MCA

IMP: 32-1-372, MCA

STATEMENT OF REASONABLE NECESSITY: The division is amending this rule to update the method by which the division notifies an applicant of an incomplete application and to improve the clarity of the rule. The division no longer uses telefax or U.S. mail to notify applicants. The current practice of the division is to use e-mail to notify applicants of deficiencies in an application.

2.59.1603 STATE, COUNTY, AND MUNICIPAL ISSUES (1) through (3)(b) remain the same.

(c) Banks ~~which that~~ have branch banks in other states, as that term is defined in 32-1-109(4), MCA, may also invest without limitation in general obligations of the political subdivisions of the states in which the offices are located.

(4) remains the same.

(a) Banks ~~which that~~ have branch banks in other states, ~~as that term is defined in 32-1-109(4), MCA~~, may also invest without limitation in revenue bonds issued by those states or their political subdivisions.

(5) and (6) remain the same.

AUTH: 32-1-433, MCA
IMP: 32-1-424, 32-1-433, MCA

STATEMENT OF REASONABLE NECESSITY: The division is amending this rule to remove reference to an incorrect subsection of law and to improve grammar.

4. Concerned persons may present their data, views, or arguments concerning the proposed action to Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; or e-mailed to banking@mt.gov; and must be received no later than 5:00 p.m., November 14, 2016.

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., November 14, 2016.

6. If the Division of Banking and Financial Institutions receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be five persons based on the 49 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>. 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, 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 amendments 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 October 3, 2016.