

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of New)	NOTICE OF ADOPTION,
Rules I through XXIII pertaining to)	AMENDMENT, AND REPEAL
banking, the amendment of ARM)	
2.59.1101 through 2.59.1103,)	
pertaining to bank branches, and the)	
repeal of ARM 2.59.108, pertaining to)	
limitations on loans, and 2.59.901,)	
pertaining to bank branch relocations)	

TO: All Concerned Persons

1. On July 24, 2020, the Department of Administration published MAR Notice No. 2-59-596 pertaining to the proposed adoption, amendment, and repeal of the above-stated rules at page 1296 of the 2020 Montana Administrative Register, Issue Number 14.

2. The department has adopted the following rules as proposed: NEW RULE III (2.59.904), NEW RULE IV (2.59.905), NEW RULE V (2.59.906), NEW RULE VII (2.59.908), NEW RULE VIII (2.59.909), NEW RULE IX (2.59.130), NEW RULE X (2.59.131), NEW RULE XI (2.59.132), NEW RULE XII (2.59.133), NEW RULE XIII (2.59.134), NEW RULE XIV (2.59.135), NEW RULE XV (2.59.136), NEW RULE XVI (2.59.137), NEW RULE XVII (2.59.138), NEW RULE XVIII (2.59.139), NEW RULE XIX (2.59.140), NEW RULE XX (2.59.141), NEW RULE XXI (2.59.142), and NEW RULE XXII (2.59.143).

3. The department has amended ARM 2.59.1101, 2.59.1102, and 2.59.1103 exactly as proposed.

4. The department has repealed ARM 2.59.108 and 2.59.901 as proposed.

5. The department has withdrawn proposed NEW RULE XXIII.

6. The department has adopted the following proposed rules with changes, new material underlined, deleted material interlined:

NEW RULE I (2.59.902) DEFINITIONS For purposes of this subchapter, the following definitions apply:

(1) remains as proposed.

(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.

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

(5) "Short distance" means:

(a) within a 1,000-foot radius of the current location of the branch 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 if the branch is not located within a principal city, but is within an MSA; or

(c) within a two-mile radius of the branch if it is not located in an MSA.

NEW RULE II (2.59.903) LOAN PRODUCTION OFFICE (1) and (2) remain as proposed.

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

(4) through (8) remain as proposed.

NEW RULE VI (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 give the notice to its customers using the customer Notice of Relocation form dated June 29, 2020, or customer Notice of Closure form dated June 29, 2020. The forms are located at www.banking.mt.gov. A bank may amend the form as needed or include additional information in the form as appropriate.

(2) and (3) remain as proposed.

7. The department has thoroughly considered the comments received. A summary of the comments received and the department's responses are as follows:

COMMENT #1: A comment was received pertaining to the definition of "relocate" in NEW RULE I. The commenter noted the FDIC elaborates further on the meaning of "relocate" in their Statement of Policy Concerning Branch Closing Notices and Policies (Statement of Policy). Specifically, the Statement of Policy references 12 CFR 5.3(l) for banks and 12 CFR 545.95(c) for thrifts. 12 CFR 5.3(l) states:

"Short-distance relocation means moving the premises of a branch or main office of a national bank or a branch or home office of a Federal savings association within a:

- (1) One thousand foot-radius of the site if the branch, main office, or home office is located within a principal city of an MSA [metropolitan statistical area];
- (2) One-mile radius of the site if the branch, main office, or home office is not located within a principal city, but is located within an MSA; or
- (3) Two-mile radius of the site if the branch, main office, or home office is not located within an MSA."

A principal city is defined as an area designated as a "principal city" by the Office of Management and Budget.

The commenter requested that the department adopt the definitions listed above.

RESPONSE #1: The department appreciates the comment and is adopting the rule with amendments to better align with FDIC definitions.

COMMENT #2: With respect to the definition of "customer" in NEW RULE I, a commenter indicated the FDIC allows greater room for interpretation in its Statement of Policy. The FDIC uses an example similar to the definition of "customer" originally proposed by the department but leaves open the option of using other methods if they are better suited to the situation. The commenter requested that the definition of "customer" be rephrased to allow more flexibility.

RESPONSE #2: The department agrees with this comment and is amending the definition adopted in rule accordingly.

COMMENT #3: The department received a comment regarding the Notice of Intent to Establish a Loan Production Office form referenced in NEW RULE II. The commenter stated that while they would likely be able to provide information about who is managing a loan production office (LPO) upon opening, they would not be able to guarantee that this information stayed current. The commenter suggested listing a higher ranking official at the bank because there may be less turnover at higher levels of the bank.

RESPONSE #3: The department acknowledges the commenter's concern; however, the department is seeking information regarding the initial manager of the LPO. The department realizes this information may change over time.

COMMENT #4: Another comment was received pertaining to sections (3), (4), and (6) of NEW RULE II. The commenter asked the department to clarify whether the requirements apply only to LPOs in the state of Montana or to LPOs in any state where a Montana-chartered bank has an LPO. The commenter also requested that the rule specify whether multiple forms needed to be submitted if the requirement applies to LPOs outside Montana.

RESPONSE #4: Sections (3) and (4) apply to all LPOs that are owned by a Montana state-chartered bank, wherever they are located. The Nationwide

Cooperative Agreement dated December 17, 1997, (which all the states' banking departments have signed) specifies that unless otherwise expressly provided under host state law, the home state supervisor shall have approval authority over all applications from a multi-state bank. Section (2) is being amended to make clear that (3) and (4) apply to all Montana state-chartered banks.

Section (6) applies to all non-federal entities doing business in this state by operation of law. The department believes this is clear from the language originally proposed and is therefore adopting (6) as proposed.

COMMENT #5: One commenter expressed concern regarding the possibility of differing publication requirements set forth in NEW RULE IV and the requirements of the host state for a branch opening outside Montana. The commenter asked the department to clarify that when a new branch opens outside Montana, the summary process in NEW RULE III can be utilized in providing notice to the department as well as the required information for the host state.

RESPONSE #5: In accordance with the Nationwide Cooperative Agreement, there should not be different publication standards, since the host state should defer to the home state, unless there is a specific provision in the host state's law. Therefore, the department is adopting NEW RULE IV as proposed.

COMMENT #6: A commenter recommended amending NEW RULE V to encompass branches and LPOs.

RESPONSE #6: NEW RULE V applies to banks organized outside of Montana branching into Montana. New Rule II(1) addresses the requirements of a bank organized outside Montana that wants to open an LPO in Montana. The department prefers to have all rules regarding LPOs in one rule and all rules regarding branches in another for organizational purposes.

COMMENT #7: A comment was received pertaining to NEW RULE VI. The commenter recommended clarifying whether this rule pertains only to branches located in Montana or if it includes branches in other states. If the rule only pertains to branches in Montana, the commenter suggested amending the rule to clarify that the bank must follow the host state rules for branch closures and relocations. If the rule pertains to branches both located in and outside of Montana, and there are differing forms required by each state, the commenter recommended clarifying whether the bank must post both states' forms.

RESPONSE #7: The department is amending NEW RULE VI to clarify that the rule applies to all Montana state-chartered banks. Under the Nationwide Cooperative Agreement, the host state should defer to the home state laws, unless there is a specific provision in the host state's law.

COMMENT #8: A commenter suggested amending NEW RULE VI to allow banks to either post the Notice of Relocation form or Notice of Closure form or a substantially

similar form which would include the required information and allow banks some flexibility to include additional information and/or bank logos.

RESPONSE #8: The department appreciates the comment and is amending the rule to allow use of a form substantially similar to the Notice of Relocation form and the Notice of Closure form.

COMMENT #9: A bank noted a discrepancy between the edition date shown on the Notice of Closure form and the date listed in the proposed rule. The form itself was dated June 9, 2020, but the edition date identified in the proposed rule was June 29, 2020.

RESPONSE #9: The edition date stated in the rule proposal is accurate. The department will correct the edition date on the form to June 29, 2020.

COMMENT #10: One commenter sought clarification regarding the scope of NEW RULES VII and VIII. The commenter asked whether the rules apply only to branches located in Montana or to branches in all states. If the scope is limited to Montana branches, the commenter recommended amending the rules to direct banks to apply the branch closure rules of the host state. If the rules apply to branches in all states, the commenters asked the department to advise whether banks must post the notices required by both the host and home state.

RESPONSE #10: If a Montana-chartered multistate bank branch must close due to a temporary emergency not to exceed 48 hours or for an emergency exceeding 48 hours, the bank should use NEW RULE VII or VIII as appropriate. Under the Nationwide Cooperative Agreement, the host state should defer to the home state's laws, unless there is a specific provision in the host state's law.

COMMENT #11: Regarding NEW RULES VII and VIII, when a bank is completing a Temporary Emergency Branch Closure form, a commenter asked whether the department would prefer to be advised of the likelihood of an emergency extending past 48 hours resulting in a duty to submit an Emergency Branch Closure form.

RESPONSE #11: The department would appreciate banks providing notice that a temporary emergency closure may turn into a longer emergency closure if the bank is aware of that information at the time an application is submitted.

COMMENT #12: A comment was received pertaining to NEW RULE XVI. The commenter recommended amending the rule to include a specific timeframe for banks to submit a request to engage in any activity or business in which the bank could engage if it were operating as a national bank before performing the requested activity or business. The commenter also asked whether there would be a specific timeframe within which the department would respond to the bank's request.

RESPONSE #12: While the department could set timeframes for submitting and responding to requests, the appropriate length of time needed will vary by situation.

In some cases, a request may clearly be allowed and may take very little time to authorize, and in others, circumstances may dictate a longer and more complicated process. The department prefers to allow the bank to determine when to submit a request to the department based on how quickly it needs a response.

COMMENT #13: A commenter noted the subject matter covered in NEW RULE XXIII was already addressed in ARM 2.59.128.

RESPONSE #13: The department agrees and has withdrawn NEW RULE XXIII. Accordingly, the scope of the definitions set forth in NEW RULE XVII (2.59.138) will be limited to NEW RULES XVIII through XXII.

COMMENT #14: One commenter asked about the department's preferred method receiving applications. The commenter requested the option to submit applications through other means, such as FDIC Connect.

RESPONSE #14: The department appreciates the question and comment. Because only examiners have access to FDIC Connect, other department personnel would not have access to the necessary information if the examiner were gone for some reason. Therefore, the supplied email is the preferred method for notifying the department of applications. The supplied email is constantly monitored by the department and will ensure the application is received and routed to the proper person in the department.

By: /s/ John Lewis
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By: /s/ Don Harris
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Certified to the Secretary of State September 1, 2020.