

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of NEW)	NOTICE OF PROPOSED
RULE I pertaining to activities of loan)	ADOPTION, AMENDMENT, AND
production offices, the amendment of)	REPEAL
ARM 2.59.104, 2.59.131, 2.59.134,)	
and 2.59.1001 pertaining to)	NO PUBLIC HEARING
assessments, dividends, conversion)	CONTEMPLATED
applications, and merger applications,)	
and the repeal of ARM 2.59.114)	
pertaining to examination fees for trust)	
companies)	

TO: All Concerned Persons

1. On March 27, 2021, the Department of Administration proposes to adopt, amend, and repeal the above-stated rules.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration no later than 5:00 p.m. on February 24, 2021, to advise us of the nature of the accommodation that you need. Please contact Heather Hardman, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2922; TDD (406) 841-2974; facsimile (406) 841-2930; or e-mail to banking@mt.gov.

3. The rule proposed to be adopted provides as follows:

NEW RULE I LOAN PRODUCTION OFFICE ACTIVITIES (1) A loan production office may conduct any of the following activities, which shall not, individually or collectively, cause the loan production office to be considered a branch, as defined in 32-1-109, MCA:

- (a) solicit loans on behalf of the bank or a branch of the bank;
- (b) assemble credit information;
- (c) make property inspections and appraisals;
- (d) secure title information;
- (e) prepare applications for loans, including making recommendations with respect to action; and
- (f) solicit investors to purchase loans from the bank and to contract with the bank for servicing of such loans.

(2) A bank shall not accept deposits or loan payments, originate deposits or savings or checking accounts, approve loans, or disburse loan funds at a loan production office established pursuant to this rule.

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

IMP: 32-1-109, 32-1-222, MCA

STATEMENT OF REASONABLE NECESSITY: The 2019 Montana Legislature enacted Chapter 75, Laws of 2019 (Senate Bill 58), an act changing the requirements for bank branch and loan production office openings, relocations, and closings. The department has received questions about activities allowable at a loan production office, as opposed to a branch. This rule is necessary to provide guidance to institutions as to activities a loan production office can engage in, and what activities will cause the loan production office to be considered a branch, which will require licensure as a branch.

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

2.59.104 SEMIANNUAL ASSESSMENT (1) ~~The Division of Banking and Financial Institutions~~ department invoices banks, investment companies, and trust companies for semiannual assessments every June and December. The assessment is based on each ~~bank's~~ institution's total assets provided in its previous March and September call reports.

(2) The fee is calculated based on the total assets of the bank, investment company, or trust company multiplied by .0000375, plus the flat fee listed below.

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

Example: Bank A reports total assets of \$58,873,000 x .0000375 plus \$3,000 equals \$5,207.74.

(3) and (4) remain the same.

(5) In the event of a ~~bank~~ merger between Montana state-chartered banks, investment companies, or trust companies during the second or fourth quarter of the year, the assessment fee for the acquired ~~bank~~ institution must be paid by the surviving ~~bank~~ institution.

(6) remains the same.

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 has identified necessary changes in these proposed amendments. Some of the proposed amendments are technical in nature, such as amending punctuation or 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. The department is changing references to the Division of Banking and Financial Institutions of the Department of Administration from "division" to "department" for consistency with other rules in ARM Title 2, chapter 59. Where additional specific bases for a proposed action exist, the department will identify those reasons immediately following that rule.

STATEMENT OF REASONABLE NECESSITY: Amendments to ARM 2.59.104 are being proposed to make clear that the rule applies to all types of institutions listed in 32-1-213, MCA. The statute includes trust companies and investment companies as well as banks. While the department does not currently have any state-chartered trust companies or investment companies under supervision at this time, the rule should apply equally to these institutions in the event one is chartered in the future.

2.59.131 REPORT OF DECLARATION AND PAYMENT OF DIVIDEND – DIVIDEND APPROVAL REQUEST FORM (1) A bank that declares a dividend shall use the Report of Declaration and Payment of Dividend form dated June 29, 2020, which is located at www.banking.mt.gov to report to the department.

(2) A bank that requires department approval prior to paying a dividend pursuant to 32-1-452, MCA, may use the Dividend Approval Request form dated December 7, 2020, which is located on the department's website at banking.mt.gov.

(3) Upon receipt of a complete and accurate request for approval to pay a dividend, the department shall respond with a determination in not more than 10 business days.

AUTH: 32-1-211, 32-1-218, ~~32-1-232~~, MCA

IMP: 32-1-211, 32-1-232, 32-1-452, MCA

STATEMENT OF REASONABLE NECESSITY: In (1), the department proposes to remove the prefix "www" in the URL for the division's website address because it is no longer necessary to successfully navigate to the website.

The department proposes to add (2), because many state-chartered banks may soon need to seek department approval to pay a dividend. Some banks have seen significant asset growth due to COVID-19 relief programs and other related issues. These banks may be close to, or below, the 8% tier 1 leverage ratio. To aid banks seeking approval to pay a dividend, the department proposes to amend this rule to provide banks with an optional form to use when department approval is required. The form includes information the department needs to make a decision. If a bank chooses not to use the form, it may use the form as a reference to determine what information must be provided to the department in the bank's written request for approval to pay a dividend.

The department is proposing to add (3) to allow banks to plan with the expectation that the department will communicate with the bank regarding the department's decision within 10 days of submission of a complete and accurate request.

2.59.134 CONVERSION OF A NATIONAL BANK TO A STATE BANK

(1) and (2) remain the same.

(3) A bank that desires to convert from a national bank to a state bank shall use the Application for Conversion of an Existing National-Chartered Bank to a State-Chartered Bank form dated June 30, 2020, which is located on the department's website at banking.mt.gov.

AUTH: ~~32-1-211~~, 32-1-218, ~~32-1-374~~, MCA

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

STATEMENT OF REASONABLE NECESSITY: The department proposes to add (3), adopting the Application for Conversion of an Existing National-Chartered Bank to a State-Chartered Bank form because the form had been in use for several years, yet it had not been formally adopted by rule.

2.59.1001 MERGER APPLICATION (1) remains the same.

(2) An application fee of \$2,000 plus \$200 for each bank involved in the merger must be paid to the ~~division~~ department at the time of application and may not be refunded in whole or in part.

(3) If an application is incomplete in any respect, or if additional information is required, the ~~division~~ department shall notify the applicant and the applicant will be allowed up to 30 days in which to perfect the application or provide additional information. An extension of this 30-day period may be obtained from the ~~division~~ department by showing good cause why it should be extended. The ~~division~~ department may delay processing, including extending the comment period for good cause.

(4) The application must be in letter form addressed to the ~~Commissioner of Banking and Financial Institutions, Department of Administration, P.O. Box 200546, Helena, MT 59620-0546~~ commissioner of the division.

(5) The department will approve or deny merger applications within 30 days of receiving a completed application.

AUTH: 32-1-218, MCA

IMP: 32-1-370, 32-1-371, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes to amend this rule to allow a reasonable amount of time for the department to review a merger application and provide an expected response date to the applicant.

5. The department proposes to repeal the following rule:

2.59.114 TRUST COMPANY EXAMINATION FEES

AUTH: 32-1-218, MCA

IMP: 32-1-211, 32-1-214, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes to repeal this rule because 32-1-213, MCA, states, in part, that trust companies will remit an assessment payment to recover all costs of administering the program for the supervision of trust companies and that the funds are for the use of the department in its examination function. The rule currently requires trust companies to remit a payment of \$75.00 for each examiner. This is in conflict with the above statute which states that all costs and fees to administer the program, which includes conducting examinations, are to be recovered through an assessment. Therefore, the department cannot request an additional fee for examinations.

The department does not currently have any state-chartered trust companies under supervision at this time. Therefore, the department estimates eliminating the fee will not affect persons or department revenue.

6. 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. Comments must be received no later than 5:00 p.m., March 12, 2021.

7. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to the person listed in paragraph 6 above no later than 5:00 p.m., February 24, 2021.

8. 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 4 persons based on the 38 state-chartered banks.

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

10. The Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall

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

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

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

By: /s/ Misty Ann Giles
Misty Ann Giles, Director
Department of Administration

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

Certified to the Secretary of State February 2, 2021.