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**OFFICE OF THE LIEUTENANT GOVERNOR  
ALASKA**

**M E M O R A N D U M**

**TO:** Sara Chambers, Department of Commerce, Community and Economic Development

**FROM:** April Simpson, Office of the Lieutenant Governor 465.4081 

**DATE:** November 27, 2023

**RE:** Filed Permanent Regulations: Department of Commerce, Community and Economic Development

Department of Commerce, Community, and Economic Development regulations re:  
Division of Banking and Securities implementation of HB85 (3 AAC 01, 02, 03, 06)

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Attorney General File:	2022200490
Regulation Filed:	11/27/2023
Effective Date:	12/27/2023
Print:	248, January 2024

cc with enclosures: Colleen Bailey, Department of Law  
Judy Herndon, LexisNexis  
Tracy Reno, Division of Banking and Securities



THE STATE  
*of* **ALASKA**  
GOVERNOR MIKE DUNLEAVY

Department of Law

CIVIL DIVISION

P.O. Box 110300  
Juneau, Alaska 99811  
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November 27, 2023

The Honorable Nancy Dahlstrom  
Lieutenant Governor  
State of Alaska  
P.O. Box 110015  
Juneau, AK 99811-0015

Re: *3 AAC 01, 02, 03, 06: DBS - Required regulations to implement HB85*  
Our file: 2022200490

Dear Lieutenant Governor Dahlstrom:

The Department of Law has reviewed the attached regulations of the Department of Commerce, Community and Economic Development against the statutory standards of the Administrative Procedure Act. Based upon our review, we find no legal problems. This letter constitutes the written statement of approval under AS 44.62.060(b) and (c) that authorizes your office to file the attached regulations. The regulations were adopted by the Department of Commerce, Community and Economic Development after the close of the public comment period.

In response to the enactment of ch. 20, SLA 2022 (SCS CSHB 85(L&C)), modernizing the Alaska Banking Code, the regulations give state-chartered banks and mutual savings banks parity with credit unions and with nationally chartered banks through amendments to AS 06.05 (state-chartered banks) and 06.15 (mutual savings banks). The regulations also make assorted clean-ups: for example, repealing long disused provisions for fact-finding hearings.

The March 1, 2023, public notice and the September 1, 2023, adoption order both state that this action is not expected to require an increased appropriation. Therefore, a fiscal note under AS 44.62.060 is not required.

We have made some technical corrections to conform the regulations in accordance with AS 44.62.060. The corrections are incorporated into the attached copy of the regulations and have increased the page count in the regulations to 12 pages, not the eight pages referred to in the adoption order.

Sincerely,

TREG TAYLOR  
ATTORNEY GENERAL

By: **Rebecca C. Polizzotto**  
Digitally signed by  
Rebecca C. Polizzotto  
Date: 2023.11.27  
14:18:30 -09'00'  
Rebecca C. Polizzotto  
Chief Assistant Attorney General  
Legislation, Regulations, and  
Legislative Research Section

RCP/SCW

CC w/enclosure: Tracy Reno  
Department of Commerce, Community and Economic Development

Maria C. Smilde, Assistant Attorney General  
Department of Law

Steven C. Weaver, Assistant Attorney General  
Department of Law

APPENDIX I: Adoption Order

ORDER ADOPTING CHANGES TO REGULATIONS  
OF DIVISION OF BANKING AND SECURITIES

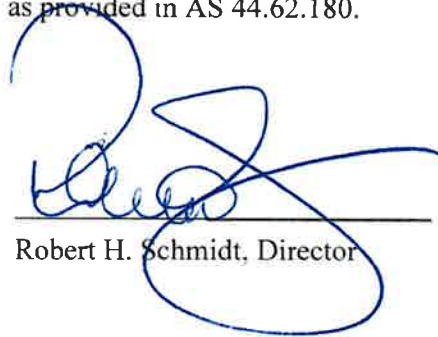
The attached <sup>twelve</sup> ~~eight~~ pages of regulations, dealing with 3 AAC 01 02 03 06 banking modernization, are adopted and certified to be a correct copy of the regulation changes that the Division of Banking and Securities adopts under the authority of AS 44.33.020(b) and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

In considering public comments, the Division of Banking and Securities paid special attention to the cost to private persons of the regulatory action being taken.

The regulation changes adopted under this order take effect on the 30th day after they have been filed by the lieutenant governor, as provided in AS 44.62.180.


Date: 9/11/23



Robert H. Schmidt, Director

FILING CERTIFICATION

I, Nancy Dahlstrom, Lieutenant Governor for the State of Alaska, certify that on November 27, 2023, at 4:08 p.m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.



for Nancy Dahlstrom, Lieutenant Governor

Effective: December 27, 2023.

Register: 248, January 2024.

**FOR DELEGATION OF THE LIEUTENANT GOVERNOR'S AUTHORITY**

**I, NANCY DAHLSTROM, LIEUTENANT GOVERNOR OF THE STATE OF ALASKA, designate the following state employees to perform the Administrative Procedures Act filing functions of the Office of the Lieutenant Governor:**

**April Simpson, Regulations and Initiatives Specialist**

**IN TESTIMONY WHEREOF, I have signed and affixed the Seal of the State of Alaska, in Juneau, on May 15th, 2023.**



A handwritten signature in blue ink, appearing to read "Nancy Dahlstrom", is written over a horizontal dotted line.

**NANCY DAHLSTROM  
LIEUTENANT GOVERNOR**

**Part 1. Banking, Securities, Small Loans, and Corporations.**

3 AAC 01.020 is repealed:

**3 AAC 01.020. Fact-finding hearings.** Repealed. (Eff. 4/4/79, Register 70; am 1/10/94, Register 129; am 3/29/2008, Register 185, repealed 12 / 27 / 2023, Register 248 )

3 AAC 02.185(a) is amended to read:

**3 AAC 02.185. Banking related activities.** (a) A bank may engage in the activities described in (b) and (c) of this section even though those activities may not be included under the definitions of either "banking" in AS 06.05.990(3) [AS 06.05.540(3)] or "branch bank" in AS 06.05.990(4) [AS 06.05.540(4)].

The introductory language of 3 AAC 02.185(c) is amended to read:

(c) A loan production office may engage in the following loan production activities, which do not constitute lending money within the meaning of AS 06.05.990(3) or (4) [AS 06.05.540(3) or (4)]:

...

3 AAC 02.185(d) is amended to read:

(d) If loans are approved and funds disbursed solely at the main office or a branch of a bank, a loan production office that engages in only the activities listed in (c) of this section is not a "place . . . at which . . . money is lent" within the meaning of AS 06.05.990(4) [AS 06.05.540(4)].

Register 248, January 2024      COMMERCE, COMMUNITY, AND EC. DEV.

3 AAC 02.185(f) is amended to read:

(f) Notwithstanding (b) - (e) of this section, if an office of a bank or of any of its branches engages in receiving deposits, payment of checks, lending of money, or any other activity included under the definition of "banking" in AS 06.05.990(3) [AS 06.05.540(3)], the office shall first apply to the department for a certificate of authority to operate as a branch bank.

(Eff. 6/16/82, Register 82; am 1/10/94, Register 129; am 12 / 27 / 2023, Register 248)

**Authority:**    AS 06.05.005            AS 06.05.075            AS 06.05.272

[AS 06.05.005(a)]

3 AAC 02.197 is repealed:

**3 AAC 02.197. Pledge of assets.** Repealed. (Eff. 1/10/94, Register 129; am 10/2/94, Register 132; repealed 12 / 27 / 2023, Register 248)

3 AAC 02.205(a)(9) is repealed:

(9) repealed 12 / 27 / 2023 ;

3 AAC 02.205(a) is amended by adding a new paragraph to read:

(12) obligations permitted under 12 U.S.C. 24 (Seventh) and (Eleventh), as of July 30, 2008, and adopted by reference, subject to the same restrictions and limitations imposed on national banks and except as prohibited elsewhere in this chapter. (Eff. 1/10/94, Register 129, am 12 / 27 / 2023, Register 248)

**Authority:**    AS 06.05.005            [AS 06.05.005(a)]      AS 06.05.270

((Publisher: Please add an "or" connector to the end of 3 AAC 02.205(a)(11) and change the period to a semi-colon.)))

The introductory language of 3 AAC 02.209(c) is amended to read:

(c) **Application for Certificate of Incorporation.** The following information and fee **payment** must be submitted to the department [DIVISION] in support of the application for a certificate of incorporation:

...

3 AAC 02.209(c)(2) is amended to read:

(2) a completed FDIC new bank application, which may be obtained directly from the FDIC [, IF THE BANK INTENDS TO BECOME A MEMBER OF THE FDIC];

3 AAC 02.209(c)(4) is amended to read:

(4) a check or money order for **\$2,000** [\$2000] made payable to the State of Alaska in partial payment of the investigation expenses incurred by the department under AS 06.01.010;

(Eff. 1/10/94, Register 129; am 12 / 27 / 2023, Register 248 )

**Authority:** AS 06.01.010 [AS 06.05.005(a)] AS 06.05.345  
**AS 06.05.005** AS 06.05.344

3 AAC 02.215(a) is amended to read:

**3 AAC 02.215. Application for a branch bank [OFFICE] or change of permanent**



**location.** (a) A **state** bank shall apply to the department for a certificate of authority to operate a branch **bank** [OFFICE] or to change the **permanent** location of an existing branch or the home office. **The application must be on a form provided by the department and contain the information required under (b) of this section, including the address of the permanent location at which the state bank or branch bank will operate, to enable the department to determine whether a certificate of authority should be issued.**

3 AAC 02.215(b) is repealed and readopted to read:

(b) The following information must accompany a bank's application for a new branch bank or a change of permanent location of an existing branch bank or the home office:

(1) the address of the permanent location at which the home office or existing branch office will operate;

(2) a completed FDIC branch or change of location application, which may be obtained directly from the FDIC;

(3) payment of \$1,000 made payable to the State of Alaska, in a format determined by the department, in partial payment of the investigation expenses incurred by the department under AS 06.01.010;

(4) a statement as to whether the proposed office or branch bank will operate on owned or leased property and, if leased, a copy of all proposed lease documents; all proposed lease documents must contain a bankruptcy clause;

(5) a balance sheet and a statement of income and expenses for the bank current as of a date not later than 30 days preceding the application;

(6) a list of the banking services to be offered by the proposed office or branch bank;

(7) a brief economic analysis that supports the need for and feasibility of the proposed office or branch bank;

(8) if an international bank, the information required under AS 06.05.555; and

(9) additional information requested by the department.

3 AAC 02.215(d) is amended to read:

(d) Upon written request from a bank and after reviewing the past reports of examination of the bank and finding that the bank is in compliance with the department's recommendations in those reports, the department **may** [WILL, IN ITS DISCRETION,] waive any of the application requirements set out in **(b)(2) and (4) - (7)** [(b)(1) AND (b)(3) - (b)(15)] of this section.

3 AAC 02.215 is amended by adding new subsections to read:

(e) The department will notify the state bank of the department's action regarding the application for a branch bank or for a change of location. If the application and the accompanying documents do not conform to the requirements under (a) of this section, the department will return the application and documents to the state bank with an explanation of the defects. If the department fails to respond within 30 days after receipt of the application, the application is considered accepted.

(f) Upon acceptance of an application for a certificate of authority to operate a branch bank or for approval to change location, the department will conduct an investigation to ascertain whether

(1) the capital structure of the state bank is adequate in relation to the anticipated business and costs of operating at the proposed location; and

(2) the state chartered bank has complied with applicable law governing its operation.

(g) Not later than 60 days after the application for a certificate of authority to operate a branch bank or to change location has been accepted, the department will determine whether to approve the application. After the department approves or denies the application, the department will notify the bank and any other person who requested in writing to be notified. If the application is denied, the department will state the reasons for its decision.

(h) The department will issue a certificate of authority to operate a branch bank or to change location if

(1) all conditions imposed by the department in granting the certificate have been fulfilled; and

(2) the requirements of this chapter are satisfied.

(i) If the rights conferred by a certificate of authority are not exercised within one year from the date of its issuance under this section, the certificate lapses unless the bank requests an extension in writing and department approves the extension. (Eff. 12/13/70, Register 36; am 4/6/79, Register 70; am 12/31/80, Register 76; am 1/10/94, Register 129; am 12 / 27 / 2023,

Register 248 )

**Authority:** AS 06.05.005 AS 06.05.399 AS 06.05.990

AS 06.05.344 AS 06.05.555 AS 44.33.020

[AS 06.05.005(a)]

3 AAC 02.217 is amended to read:

**3 AAC 02.217. Application for a mobile facility branch bank.** (a) The following information must accompany a bank's application for a mobile facility branch bank:

(1) materials and fee required by 3 AAC 02.215(b)(2) - (5) [3 AAC 02.215(b)(1) - (b)(10)];

(2) a map of the area to be served drawn to a scale that shows at least the community boundaries and indicating

(A) the locations at which the mobile facility branch bank would provide banking services;

(B) the point of origin of and storage location of the proposed mobile facility branch bank when not in use; and

(C) the location and identity of financial institutions within a 25-mile radius of the area to be served by the proposed mobile facility branch bank;

(3) a list of the banking services to be offered by the proposed mobile facility branch bank;

(4) the proposed schedule indicating the time of day and days of the week that the proposed mobile facility branch bank would provide banking services at the indicated locations and whether the proposed mobile facility branch bank would be operated on a year-round or seasonal basis;

(5) security procedures to be used when the proposed mobile facility branch bank is in use and when it is not in use; and

(6) [A DESCRIPTION OF THE TYPE OF MOBILE FACILITY PROPOSED TO PROVIDE THE SERVICES INDICATED AND A STATEMENT OF HOW ASSETS AND

LIABILITIES OF THE PROPOSED MOBILE FACILITY WILL BE CARRIED ON THE BOOKS OF THE BANK;

(7) THE NAME AND RESUME OF THE INDIVIDUAL WHO WILL BE DIRECTLY RESPONSIBLE FOR THE MANAGEMENT OF THE PROPOSED MOBILE FACILITY;

(8) A BRIEF ECONOMIC ANALYSIS SUPPORTING THE ASSERTION THAT THE SERVICE AREA NEEDS THE PROPOSED SERVICES; AND

(9)] additional information requested by the department.

(b) A proposed change in the daily schedule for a mobile facility **branch bank** or a change in the location at which a mobile facility **branch bank** is to provide banking services must be approved in writing by the department at least 30 days before the proposed implementation date of the change.

(c) A [NO] bank may **not** conduct a banking business through a mobile facility **branch bank** without a certificate of authority for that facility issued by the department. The certificate of authority must be prominently and publicly displayed in the mobile facility **branch bank**.

(d) Upon written request from a bank and after reviewing the past reports of examination of the bank and finding that the bank is in compliance with the department's recommendations in those reports, the department **may** [WILL, IN ITS DISCRETION,] waive [ANY OF THE APPLICATION REQUIREMENTS SET OUT IN (a)(6) - (a)(8) OF THIS SECTION AND] those requirements referred to in (a)(1) of this section, except that the department will not waive the requirements of **3 AAC 02.215(b)(2) and (3)** [3 AAC 02.215(b)(1) AND (b)(2)]. (Eff.

4/6/79, Register 70; am 12/31/80, Register 76; am 1/10/94, Register 129; am 12 / 27 / 2023,

Register 248)

Register 248, January 2024 COMMERCE, COMMUNITY, AND EC. DEV.

**Authority** AS 06.05.005 [AS 06.05.005(a)] AS 06.05.399

3 AAC 02.350(d) is amended to read:

(d) [IF THE DEPARTMENT DOES NOT RECEIVE A REQUEST FOR A FACT-FINDING HEARING UNDER 3 AAC 01.020 WITHIN 30 DAYS AFTER THE FINAL PUBLICATION OF NOTICE UNDER (c) OF THIS SECTION OR DETERMINES AFTER A FACT-FINDING HEARING THAT THE APPLICATION MEETS THE REQUIREMENTS OF (b) OF THIS SECTION, THE DEPARTMENT WILL APPROVE THE APPLICATION, ISSUE A CERTIFICATE OF CONVERSION, MERGER OR CONSOLIDATION, AND FORWARD THE CERTIFICATE TO THE CHAIRPERSON OR THE BOARD REPRESENTATIVE OF THE CONVERTED, SURVIVING, OR NEW BANK.] The certificate of conversion, merger, or consolidation becomes effective upon issuance unless the certificate specifies a later effective date **that is** [WHICH WILL] not [BE] later than 15 days after issuance of the certificate.

(Eff. 4/6/79, Register 70; am 5/1/80, Register 74; am 1/10/94, Register 129; am

12 / 27 / 2023, Register 248)

**Authority:** AS 06.01.030 [AS 06.05.005(a)] AS 06.05.462  
AS 06.05.005 AS 06.05.075 AS 06.05.555

3 AAC 02.910(7) is repealed:

(7) repealed 12 / 27 / 2023;

3 AAC 02.910 is amended by adding a new paragraph to read:

(8) "mobile facility branch bank" means a branch bank that

(A) moves from one location to another to provide banking services; or

(B) is located in or serves a remote area of the state not being adequately served by a permanently located bank or bank branch. (Eff. 4/6/79, Register 70; am 3/29/80, Register 73; am 12/23/87, Register 105; em am 8/18/88 - 12/15/88, Register 107; am 1/10/94, Register 129; am 10/23/94, Register 132; am 12 / 27 / 2023, Register 248)

<b>Authority:</b>	<u>AS 06.01.020</u>	<u>AS 06.05.250</u>	<u>AS 06.15.180</u>
	AS 06.05.005	AS 06.05.540	<u>AS 06.15.360</u>
	<u>AS 06.05.075</u>	<u>AS 06.15.010</u>	

((Publisher: Please change the period at the end of 3 AAC 02.910(7) to a semi-colon.))

3 AAC 03.260(a) is amended to read:

**3 AAC 03.260. Application for branch or change of location.** (a) A [THE] credit union must apply to the department for a certificate of authority to operate a branch office, **including a mobile facility branch**, or to change the location of the principal office or a branch office.

3 AAC 03.260(b)(1) is amended to read:

(1) **payment of** [A CHECK OR MONEY ORDER FOR] **\$1,000** [\$500] made payable to the State of Alaska, **in a format determined by the department**, in partial prepayment of the investigation expenses incurred by the department under AS 06.01.010;

The introductory language of 3 AAC 03.260(b) is amended to read:

(b) The department may require the following before it approves an application to operate a branch, **including a mobile facility branch**, or change the location of an office:

...

3 AAC 03.260(c) is amended to read:

(c) A [NO] credit union may **not** conduct business through a branch **office, including a mobile facility branch**, without a certificate of authority issued by the department, which must be prominently and publicly displayed in that branch. (Eff. 1/21/81, Register 77; am 12 / 27 / 2023, Register 248)

**Authority:** AS 06.45.010      **AS 06.45.040**      AS 06.45.300

3 AAC 03.910 is amended by adding a new paragraph to read:

(11) “mobile facility branch” means a branch that

(A) moves from one location to another to provide services allowed under AS 06.45; or

(B) is located in or serves a remote area of the state not being adequately served by a permanently located branch. (Eff. 1/21/81, Register 77; am 4/16/2000, Register 154; am 12 / 27 / 2023, Register 248)

**Authority:** AS 06.45.010

((Publisher: Please change the period at the end of 3 AAC 03.910(10) to a semi-colon.))

3 AAC 04.540(d) is amended to read:

(d) **The department will review any comments in response to the public notice and determine whether the merger or consolidation is consistent with the maintenance or promotion of a safe and sound trust system. Not later than** [IF THE DEPARTMENT DOES



Register 248, January 2024 COMMERCE, COMMUNITY, AND EC. DEV.

NOT RECEIVE A REQUEST FOR A FACT-FINDING HEARING UNDER 3 AAC 04.910(b) WITHIN] 30 days after the final publication of notice under (c) of this section, **the department will determine whether** [OR DETERMINES AFTER A FACT-FINDING HEARING THAT] the application meets the requirements of (b) **and (c)** of this section. **If** [,] the department **approves** [WILL APPROVE] the application, **it will** issue a certificate of merger or consolidation, and forward the certificate to the chair or board representative of the surviving or new trust company. The certificate of merger or consolidation becomes effective upon issuance unless the certificate specifies a later effective date. If the certificate specifies a later effective date, the department will not set a date that is later than 15 days after issuance of the certificate. (Eff. 3/29/2008, Register 185; am 12 / 27 / 2023 , Register 248 )

**Authority:** AS 06.26.650 AS 06.26.660 AS 06.26.900

The section heading of 3 AAC 04.910 is changed to read:

**3 AAC 04.910. Procedures for appeals [AND FACT-FINDING HEARINGS].**

3 AAC 04.910(b) is repealed:

(b) Repealed 12 / 27 / 2023 . (Eff. 3/29/2008, Register 185; am 12 / 27 / 2023 , Register 248 )

3 AAC 06 is amended by adding a new section to Article 2 to read:

**3 AAC 06.105. Bank investments.** The provisions of 3 AAC 02.205 apply to a mutual savings bank. (Eff. 12 / 27 / 2023 , Register 248 )

**Authority:** AS 06.15.240 AS 06.15.270 AS 44.33.020