

*absolute
emergency rule
valid June 11, 1982 for 90*

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE 6/11/82

WEST VIRGINIA ADMINISTRATIVE REGULATIONS
West Virginia Board of Banking and Financial Institutions

West Virginia Code 31A-8-12(d)(2)
Series VIII
(1982)

Subject: Procedural rule pertaining to the processing of branch bank applications received pursuant to West Virginia Code §31A-8-12(d)(2).

STATEMENT OF EMERGENCY

Pursuant to West Virginia Code §29A-3-15(a), the West Virginia Board of Banking and Financial Institutions has determined that an emergency exists, as defined in West Virginia Code §29A-3-15(e), requiring the promulgation of this emergency procedural rule. With the enactment of West Virginia Code §31A-8-12(d)(2) (in Committee Substitute for Senate Bill 331) on March 13, 1982, and its becoming effective on this date, June 11, 1982, an emergency has arisen that necessitates the promulgation of a procedural rule to prevent substantial harm to the public interest. Without the promulgation of this emergency procedural rule, state-chartered banking institutions would have been at a disadvantage, as compared to federally-chartered banking institutions, with regard to the establishment of branch banks by the construction, lease or acquisition of a facility in an unbanked area within the county in which is situate its principal office. Furthermore, the provision of West Virginia Code §31A-8-12(d)(2) which limits, to two, the number of branches that may be established in each unbanked area, necessitates the promulgation of this emergency procedural rule to provide for an orderly processing of branch bank applications.

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Subject: Procedural rule pertaining to the processing of branch bank applications received pursuant to West Virginia Code §31A-8-12(d)(2).

Section 1. General

1.01. Scope - These regulations establish specific procedural rules pertaining to the processing of applications received from banking institutions to establish a branch bank by the construction, lease or acquisition of a facility in an unbanked area within the county in which is situate its principal office, pursuant to West Virginia Code §31A-8-12(d)(2).

1.02. Authority - These regulations are issued under authority of West Virginia Code §31A-3-2-(a)(1).

1.03. Filing Date - June 11, 1982.

1.04. Effective Date - June 11, 1982.

Section 2. Definitions

2.01. "Board" - "Board" shall mean the West Virginia Board of Banking and Financial Institutions or the chairman of the West Virginia Board of Banking and Financial Institutions.

2.02. "OCC" - "OCC" shall mean the Office of the Comptroller of the Currency or the Regional Administrator of National Banks for the

Fifth National Bank Region of the Office of the Comptroller of the Currency.

2.03. "Unbanked area" - An area is an "unbanked area" if no banking institution or branch bank created by merger and consolidation exists within the limits of an incorporated municipality.

2.04. "Contested unbanked area" - An unbanked area shall be deemed to be a "contested unbanked area" if more than two state and/or national banking institutions' applications to establish branch banks by the construction, lease or acquisition of facilities in the same unbanked area within the county in which is situate their principal offices have been received by the Board and/or the OCC before 5:00 p.m., June 18, 1982.

2.05. "Uncontested unbanked area" - An unbanked area shall be deemed to be an "uncontested unbanked area" if two or less state and/or national banking institutions' branch bank applications to establish branch banks by the construction, lease or acquisition of facilities in the same unbanked area within the county in which is situate their principal offices have been received by the Board and/or the OCC before 5:00 p.m., June 18, 1982.

Section 3. Acceptance of applications

3.01. Acceptance of applications - The Board shall first accept applications to establish branch banks by the construction, lease or acquisition of a facility in an unbanked area within the county in which is situate their principal offices from state banking institutions on

June 11, 1982. Any application received before June 11, 1982 will not be deemed to have been received until June 11, 1982.

Section 4. Procedures for processing branch bank applications--
contested unbanked areas

4.01. Drawing of branch bank application in each contested unbanked area - For each contested unbanked area, the board and the OCC shall determine in what order two state and/or national banking institution branch bank applications shall be considered. All eligible state and/or national banking institutions branch bank applications shall be drawn from a pool of branch bank applications for each particular contested unbanked area and the sequence of the drawing shall be recorded for purposes of processing branch bank applications pursuant to 4.02 below. The drawing shall be conducted on or before June 23, 1982, under the auspices of an independent third party. Banking institutions shall be notified of the order of selection for each contested unbanked area.

4.02. Review of branch bank applications - The branch bank applications of the first two state and/or national banking institutions selected in each contested unbanked area shall be reviewed before other branch bank applications filed by other state and/or national banking institutions for the same contested unbanked area. If the branch bank applications of either or both of the first two banking institutions selected for initial review are not ultimately approved or the branch banks are not established within the specific period of time for which such approval is granted, the pending branch bank applications of other state and/or national banking institutions in the order in which they

were randomly selected shall be considered. This process shall continue until two branch bank applications in each contested unbanked area are approved and two branch banks are established in each contested unbanked area.

4.03. Positions of priority not transferable - A banking institution's position of priority established pursuant to the random selection process described in 4.01 above shall not be transferable to any other banking institution.

4.04. Eligibility for the random selection process for contested unbanked areas - To be eligible for the random selection process for a contested unbanked area (as that random selection process is described in 4.01 above), a state banking institution must file a branch bank application (FDIC form 6210/06A) with the Board before 5:00 p.m., June 18, 1982. The original of said application, accompanied by a nonrefundable one thousand dollar (\$1,000) fee (as required under West Virginia Code 31A-8-12(i)), must be remitted to the West Virginia Department of Banking. It is the responsibility of the state banking institution to insure that the West Virginia Department of Banking receives its branch bank application before 5:00 p.m., June 18, 1982, to be eligible for the random selection process for a contested unbanked area. The Board reserves the discretion to reject any incomplete branch bank application.

Section 5. Separate branch bank applications for each unbanked area

5.01. Separate branch bank applications for each unbanked area - A separate branch bank application and filing fee are required for each

unbanked area where a banking institution applies for a branch bank to be established by the construction, lease or acquisition of a facility, provided, however, that banking institutions will not be permitted to file more than one branch bank application for a particular unbanked area. If a banking institution files branch bank applications for more than one unbanked area, it must inform the Board, in writing, of its order of preference, at the time the branch bank applications are filed. If a state banking institution is selected first or second in more than one contested unbanked area, the Board will review only the branch bank application ranked highest in the order of preference established by that banking institution.

Section 6. Conditional approval of branch bank applications

6.01. Conditional approval of branch bank applications - Approval of a branch bank application for a branch bank to be established in a contested unbanked area shall be conditioned upon the banking institution establishing the branch bank and opening it for business no later than six months after Board approval of the application, provided, however, that the Commissioner of Banking may make a determination, upon a written request, that extraordinary circumstances exist which warrant an extension of that six month period of time.

Section 7. Procedures for processing branch bank applications--
contested unbanked areas--received after 5:00 p.m.,
June 18, 1982

7.01. Procedures for processing branch bank applications--
contested unbanked areas--received after 5:00 p.m., June 18, 1982 - Any

branch bank application, with the location of the proposed branch bank being in a contested unbanked area, that is received after 5:00 p.m., June 18, 1982, shall be processed only after all pending applications for the same contested unbanked area have been reviewed pursuant to 4.02 above.

Section 8. Procedures for processing branch bank applications--
uncontested unbanked areas

8.01. Procedures for processing branch bank applications--
uncontested unbanked areas - If an unbanked area is deemed to be an uncontested unbanked area, pursuant to 2.03 above, branch bank applications, received before 5:00 p.m., June 18, 1982, by banking institutions that want to establish a branch bank by the construction, lease or acquisition of a facility in that unbanked area, shall not be subject to the random selection described in 4.01 above, but shall be considered instead according to the standard procedures of the Board.

Section 9. Regulations not applicable to branching by merger

9.01. Regulations not applicable to branching by merger - Nothing contained in these regulations shall be construed to effect the processing of a banking institution's application to establish a branch bank by the purchase of the business and assets and assumption of the liabilities of, or merger or consolidation with, another banking institution, pursuant to West Virginia Code §31A-8-12(d)(1).