

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 44.2.301, 44.2.302, and) PROPOSED AMENDMENT
44.5.114 through 44.5.121 pertaining)
to Business Services Division filings)
and fees)

TO: All Concerned Persons

1. On March 15, 2016, at 9:30 a.m., the Secretary of State will hold a public hearing in the Secretary of State's Office Conference Room, Room 260, State Capitol Building, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Secretary of State will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Secretary of State no later than 5:00 p.m. on March 1, 2016, to advise us of the nature of the accommodation that you need. Please contact Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 431-7718; fax (406) 444-4249; TDD/Montana Relay Service (406) 444-9068; or e-mail jquintana@mt.gov.

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

44.2.301 ACCEPTANCE OF ELECTRONIC RECORDS AND ELECTRONIC SIGNATURES (1) ~~The only electronic records the secretary of state accepts for filing with the business services division are those specified in ARM 44.5.301 and 44.6.113~~ Effective early in 2016, the business services division of the Secretary of State's office will begin accepting business filings electronically.

(2) Electronic signatures contained in the electronic records referenced in (1) must meet the definition set forth in 30-18-102(9), MCA.

(3) Any documents ~~other than those specified in (1) that are filed with the business services division~~ not filed electronically with the business services division must be on paper or by facsimile and must be signed by the person executing the document.

(4) Electronic signatures, as defined in 30-18-102(9), MCA shall be accepted by the business services division if they meet the following criteria. The electronic signature shall:

(a) through (5) remain the same.

AUTH: 30-18-118, MCA

IMP: 30-18-117, MCA

REASON: The Secretary of State's office is in the process of implementing a phase of the electronic online filing system (SIMS) authorized by 2-15-404, MCA, that will allow the online filing of business documents required to be filed with the Secretary of State. The amendments to (1) and (3) are proposed to expand the kinds of electronic records that will be accepted by the agency once the business enterprise portion of the SIMS system goes live. The amendments to (2) and (4) are proposed to conform to the Secretary of State's formatting guidelines that suggest eliminating earmarks in section text.

44.2.302 SECRETARY OF STATE'S STATEWIDE ELECTRONIC FILING SYSTEM (1) through (9) remain the same.

(10) Users submitting a business filing that is rejected by the Secretary of State have 100 days to resubmit the document or it will be removed from the electronic repository that holds documents during the working stage of the filing process.

AUTH: 2-15-404, MCA
IMP: 2-15-401, 2-15-404, MCA

REASON: The amendment is required because the business registry system used by the vendor that is building the SIMS system requires a deadline or term for each filing action. The Secretary of State determined that a 100-day window to complete an online business filing allowed a sufficient amount of time for businesses to complete a business filing that did not initially meet the required filing criteria.

44.5.114 CORPORATIONS - PROFIT AND NONPROFIT FEES (1) through (3) remain the same.

(4) If a paper-filed document is rejected because of deficiencies in the filing, a reprocessing fee of 50 percent of the initial filing fee will be assessed each time the document is resubmitted.

(5) Electronically filed documents rejected because of deficiencies in the filing will not be assessed a reprocessing fee.

(5) remains the same, but is renumbered (6).

AUTH: 2-15-405, 35-1-1307, 35-2-1107, 35-7-103, MCA
IMP: 2-15-405, 35-1-217, 35-1-1206, 35-1-1307, 35-2-119, 35-2-1003, 35-6-201, MCA

44.5.115 LIMITED LIABILITY COMPANY FEES (1) through (3) remain the same.

(4) If a paper-filed document is rejected because of deficiencies in the filing, a reprocessing fee of 50 percent of the initial filing fee will be assessed each time the document is resubmitted.

(5) Electronically filed documents rejected because of deficiencies in the filing will not be assessed a reprocessing fee.

(5) remains the same, but is renumbered (6).

AUTH: 2-15-405, MCA

IMP: 2-15-405, 35-8-208, 35-8-211, 35-8-212, MCA

44.5.116 LIMITED LIABILITY PARTNERSHIP FEES (1) through (7) remain the same.

(8) If a paper-filed document is rejected because of deficiencies in the filing, a reprocessing fee of 50 percent of the initial filing fee will be assessed each time the document is resubmitted.

(9) Electronically filed documents rejected because of deficiencies in the filing will not be assessed a reprocessing fee.

(9) remains the same, but is renumbered (10).

AUTH: 2-15-405, 35-10-111, MCA

IMP: 2-15-405, 35-10-111, 35-10-720, MCA

44.5.117 LIMITED PARTNERSHIP FEES (1) remains the same.

(2) If a paper-filed document is rejected because of deficiencies in the filing, a reprocessing fee of 50 percent of the initial filing fee will be assessed each time the document is resubmitted.

(3) Electronically filed documents rejected because of deficiencies in the filing will not be assessed a reprocessing fee.

(3) remains the same, but is renumbered (4).

AUTH: 2-15-405, MCA

IMP: 2-15-405, 35-12-521, MCA

44.5.118 COOPERATIVE ASSOCIATIONS, AGRICULTURAL ASSOCIATIONS, COOPERATIVE AGRICULTURAL AUTHORITY, RURAL COOPERATIVE UTILITIES FEES (1) through (4) remain the same.

(5) If a paper-filed document is rejected because of deficiencies in the filing, a reprocessing fee of 50 percent of the initial filing fee will be assessed each time the document is resubmitted.

(6) Electronically filed documents rejected because of deficiencies in the filing will not be assessed a reprocessing fee.

(6) remains the same, but is renumbered (7).

AUTH: 2-15-405, 35-15-210, MCA

IMP: 2-15-405, 35-15-201, 35-15-205, 35-15-210, 35-17-205, 35-18-502, MCA

44.5.119 ASSUMED BUSINESS NAME FEES (1) through (7) remain the same.

(8) If a paper-filed document is rejected because of deficiencies in the filing, a reprocessing fee of 50 percent of the initial filing fee will be assessed each time the document is resubmitted.

(9) Electronically filed documents rejected because of deficiencies in the filing will not be assessed a reprocessing fee.

(9) remains the same, but is renumbered (10).

AUTH: 2-15-405, MCA
IMP: 2-15-405, 30-13-217, MCA

44.5.120 TRADEMARK FEES (1) through (5) remain the same.

(6) If a paper-filed document is rejected because of deficiencies in the filing, a reprocessing fee of 50 percent of the initial filing fee will be assessed each time the document is resubmitted.

(7) Electronically filed documents rejected because of deficiencies in the filing will not be assessed a reprocessing fee.

(7) remains the same, but is renumbered (8).

AUTH: 2-15-405, MCA
IMP: 2-15-405, 30-13-311, 30-13-313, 30-13-315, 30-13-320, MCA

REASON: ARM 44.5.114 through 44.5.120 are amended to eliminate the reprocessing fee for electronically filed documents because electronic filing removes the costs associated with paper filings, i.e., envelopes, postage, paper, receipting by fiscal personnel, and data entry by compliance technicians. The Secretary of State encourages the business community to file documents online to keep their business costs at a minimum and to reduce staff time in processing the documents.

44.5.121 MISCELLANEOUS FEES (1) through (7) remain the same.

(8) Business alert (watch list)—online user will be notified when a document or notice is recorded against a business they want to track \$50.00 per year

~~(8)~~ (9) If a paper-filed document is rejected because of deficiencies in the filing, a reprocessing fee of 50 percent of the initial filing fee will be assessed each time the document is resubmitted.

(10) Electronically filed documents rejected because of deficiencies in the filing will not be assessed a reprocessing fee.

(9) remains the same, but is renumbered (11).

AUTH: 2-15-403, 2-15-405, 20-7-604, 30-9A-526, 35-1-1307, 35-2-1107, 35-7-103, 82-1-104, MCA
IMP: ~~2-6-103~~, 2-15-403, 2-15-405, 20-7-604, 30-9A-525, 30-13-320, 35-1-1206, 35-2-119, 35-2-1003, 35-2-1107, 35-7-103, 80-8-210, 82-1-104, MCA

REASON: The Secretary of State is offering a new business alert service to notify online users when a document or notice is recorded against a business. A fee of \$50.00 per year will be assessed for this optional service. The amendment to (9) is to eliminate the reprocessing fee for electronically filed documents because electronic filing removes the costs associated with paper filings, i.e., envelopes, postage, paper, receipting by fiscal personnel, and data entry by compliance technicians. The Secretary of State encourages the business community to file documents online to keep their business costs at a minimum and to reduce staff time in processing the documents. The authority and implementation statutes were reviewed and updated.

4. Pursuant to 2-4-302, MCA, the Secretary of State is unable to include an estimate of the cumulative dollar amount for all persons of the proposed fee decrease in ARM 44.5.114 through 44.5.121 for eliminating a reprocessing fee for electronically filed documents. The total dollar amount collected in Fiscal Year 2015 for reprocessing fees was \$51,278 and the number of businesses affected was 8,109. The Secretary of State assumes that the dollar amount will decrease significantly when businesses are offered the opportunity to file their documents online, but until that option is available, there is no way to predict the dollar amount or number of businesses affected.

5. Pursuant to 2-4-302, MCA, the Secretary of State is unable to include an estimate of the cumulative dollar amount for all persons of the proposed business watch fee in ARM 44.5.121. This optional service will provide a benefit to businesses or individuals utilizing this service, but there is no way to predict the dollar amount that will be generated or the number of businesses or individuals that will take advantage of this service.

6. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, or by e-mailing jquintana@mt.gov, and must be received no later than 5:00 p.m., March 18, 2016.

7. Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, has been designated to preside over and conduct the hearing.

8. The Secretary of State maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding administrative rules, corporations, elections, notaries, records, uniform commercial code, or combination thereof. Such written request may be mailed or delivered to the Secretary of State's Office, Administrative Rules Services, 1236 Sixth Avenue, P.O. Box 202801, Helena, MT 59620-2801, faxed to the office at (406) 444-4263, or may be made by completing a request form at any rules hearing held by the Secretary of State's Office.

9. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State 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 in the event of a discrepancy 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 Secretary of State 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.

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

11. With regard to the requirements of 2-4-111, MCA, the Secretary of State has determined that amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ JORGE QUINTANA
Jorge Quintana
Rule Reviewer

/s/ LINDA MCCULLOCH
Linda McCulloch
Secretary of State

Dated this 8th day of February, 2016.