

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 44.2.302, 44.5.301, and) PROPOSED AMENDMENT
44.5.302 pertaining to online filing of)
annual reports)

TO: All Concerned Persons

1. On August 24, 2017, 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 August 17, 2017, to advise us of the nature of the accommodation that you need. Please contact Jeff Hindoien, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 444-6197; fax (406) 444-4249; TDD/Montana Relay Service (406) 444-9068; or e-mail Jeffrey.Hindoien@mt.gov.

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

44.2.302 SECRETARY OF STATE'S STATEWIDE ELECTRONIC FILING SYSTEM (1) Pursuant to 2-15-401 and 2-15-404, MCA, the Secretary of State has developed and partially implemented a statewide electronic filing system (system) to allow the online filing of many business documents required to be filed with the Secretary of State.

~~(2) The online filing system is named SIMS, which is an acronym for the Secretary of State's information management system.~~

~~(3) The implemented first phase of SIMS allows the online filing of Uniform Commercial Code documents.~~

(4)(2) SIMS The system is hosted in a PCI (payment card industry) compliant data center and day-to-day operational and security management is the responsibility of a contracted vendor.

(5)(3) The SIMS application system is built to accept and store properly entered data, allow later search capability of the system, and provide standardized reporting.

~~(6) SIMS users are required to set up an SIMS account through ePass (the state of Montana's online access portal), which identifies them for the purpose of authentication, unless the Secretary of State is granted an exception from complying with ePass policies or standards.~~

~~(7)~~(4) Password complexity for online users is consistent with Department of Administration standards.

~~(8)~~(5) State and federal law governing the filing of lien notices does not require signatures if the document is filed online.

~~(9)~~(6) ~~SIMS~~ The system generates an image based on the information entered by the online user which contains a unique filing number and filing date/time and may be printed for the user's records.

(10) remains the same but is renumbered (7).

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

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

REASON: The Secretary of State is not utilizing the acronym "SIMS" as part of the operational environment for the system, so the name and acronym are being removed from the rule to avoid any confusion. As the system has now been developed, users may not be required to establish an account through ePass in all circumstances, so the reference to an absolute requirement for such an account in former (6) is being removed from the rule.

44.5.301 DEFINITIONS AND REQUIREMENTS FOR ANNUAL REPORT

ONLINE FILING ~~(1)~~ The following definitions apply for filing corporation and limited liability company annual reports on-line:

~~(a)~~ "Compliance officer" is a person who works in the secretary of state's office who is qualified to certify that an annual report meets the requirements of the law;

~~(b)~~ "Registered user" is a person or entity who is registered with a private vendor to file annual reports using the online filing system available through Internet technology;

~~(c)~~ "Submitter" is a person or entity that files an annual report online.

~~(2)~~ Fees and payment methods for online filing of annual reports are published online by the private vendor.

~~(3)~~(1) Annual reports filed through the use of Internet technology are considered to be annual reports filed online.

~~(4)~~ The following annual reports are acceptable for online filing:

~~(a)~~ domestic and foreign profit corporations (meet the requirements of Title 35, chapter 1, section 1104, MCA);

~~(b)~~ domestic and foreign nonprofit corporations (meet the requirements of Title 35, chapter 2, section 904, MCA);

~~(c)~~ domestic and foreign limited liability companies (meet the requirements of Title 35, chapter 8, section 208, MCA).

~~(5)~~(2) An annual report may be filed electronically online without the signature of the authorized agent.

~~(a)~~ If an original or reproduced paper document is filed, the annual report must be signed by an authorized agent.

~~(6)~~ Annual reports against the following entities are not acceptable for online filing:

~~(a)~~ inactive corporations;

~~(b) inactive limited liability companies;~~
~~(c) corporations or limited liability companies that are pending renewal for term of existence.~~

~~(7)~~(3) Online filing is available 24 hours a day, 7 days a week.

~~(8)~~(4) Except for dissolved entities applying for reinstatement, online filing is not available for domestic corporations or domestic limited liability companies after the first business day in December, until the first business day in January. Except for revoked entities applying for recertification, online filing is not available for foreign corporations and foreign limited liability companies ~~will not be available for filing online~~ after the first business day in November until the first business day in January.

~~(9)~~(5) Submitters will be notified through the online application system when the site is unavailable due to technology problems or system maintenance.

~~(10)~~ The following requirements must be met in order to successfully complete an on-line annual report filing:

~~(a)~~ the requirements set forth under Title 35, chapter 1, section 1104 and Title 35, chapter 2, section 904, and Title 35, chapter 8, section 208, MCA.

~~(11)~~(6) An annual report document that is successfully completed and submitted ~~on-line~~ online will be considered filed upon receipt by the Secretary of State's office. The ~~on-line~~ online technology application will ensure the document is properly completed prior to acceptance. The submitter will be notified by an ~~on-line~~ online message if required fields are not properly completed. A message confirming successful completion and acceptance will appear ~~on-line~~ online when the filing is accepted.

~~(12)~~(7) Submitters should ~~print and~~ retain their acknowledgement message as proof that the ~~on-line~~ online filing was received by the Secretary of State's office. The acknowledgement message will contain a unique filing number, filing date, and time.

~~(13)~~(8) The ~~on-line~~ online annual reports will be rejected if information is omitted.

~~(14)~~(9) The submitter will be notified through the ~~on-line~~ online site if the electronically filed annual report is rejected. If a filing is later determined to be improper the Secretary of State's office will notify the submitter via phone, fax, or e-mail notification.

~~(15)~~(10) The date and time a successfully submitted ~~on-line~~ online filing is considered to be effective is the date and time the document was accepted by the Secretary of State's office.

AUTH: 2-15-401, 2-15-404, 30-9A-526, MCA

IMP: 2-15-404, 30-9A-102, 30-9A-523, 35-1-1104, 35-1-1308, 35-1-1315, 35-2-904, 35-8-208, MCA.

REASON: The current rule was promulgated in 2008 in relation to an older electronic business filings system that no longer exists. The new system does not have the same restrictions as the 2008 system on the availability of on-line filing for certain types of annual reports, so those distinctions are being removed from the rule.

44.5.302 FORM OF ANNUAL REPORT (1) An annual report filed pursuant to 35-1-1104, 35-2-904, and 35-8-208, MCA, must be ~~on a form prescribed and furnished by the secretary of state if it is not filed online~~ in accordance with ARM 44.5.301.

AUTH: 2-15-401, 2-15-404, 35-1-1307, 35-1-1308, MCA

IMP: 2-15-404, 35-1-217, 35-1-1104, 35-1-1308, 35-1-1315, 35-2-904, 35-8-208, MCA.

REASON: In accordance with 35-1-1308 and 35-1-1315, MCA, the Secretary of State is prescribing by rule the standard and required format for the submission of annual reports by corporations and limited liability companies. Under the amended rule, annual reports must be filed with the Secretary of State online, and paper filings will no longer be an acceptable format for filing.

4. 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 Jeff Hindoien, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, or by e-mailing Jeffrey.Hindoien@mt.gov, and must be received no later than 5:00 p.m., September 1, 2017.

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

6. 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, e-mail, 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 a combination thereof. Notices will be sent by e-mail unless a mailing preference is noted in the request. 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.

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

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

/s/ JEFFREY M. HINDOIEN
Jeffrey M. Hindoien
Rule Reviewer

/s/ COREY STAPLETON
Corey Stapleton
Secretary of State

Dated this 24th day of July, 2017.