

BEFORE THE SECRETARY OF STATE  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 44.2.204, 44.2.302, 44.5.114, ) PROPOSED AMENDMENT  
44.5.115, 44.5.119, 44.5.120, and )  
44.5.121 pertaining to the update of )  
provisions related to Business )  
Services filings and other )  
administrative updates )

TO: All Concerned Persons

1. On August 12, 2022, at 10:30 a.m., the Secretary of State will hold a public hearing in the Secretary of State's Office conference room, Room 260, State Capitol, 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 rulemaking process 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., August 5, 2022, to advise us of the nature of the accommodation that you need. Please contact Sue Ames, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 444-2807; fax (406) 444-3976; TDD/Montana Relay Service (406) 444-9068; or e-mail sames@mt.gov.

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

44.2.204 ACCESS TO PUBLIC INFORMATION AND FEES FOR COPIES

(1) remains the same

(2) Requests to examine public information in the Secretary of State's Office will be granted by appointment. There is no charge for examination of public information in the office, but fees for research and preparing public information for examination or copying will be charged in accordance with (~~56~~).

(3) through (7) remain the same

AUTH: 2-6-1006, 2-15-405, MCA

IMP: Article II, section 9, Montana Constitution, 2-6-1003, 2-6-1006, MCA

REASONABLE NECESSITY: The proposed change corrects an internal reference which appears to be a clerical error made in the previous rulemaking (MAR Notice No. 44-2-226).

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) and (3) remain the same.

(4) ~~System~~ Users are required to set up an account to create or edit records maintained in the system 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.~~

(5) through (7) remain the same.

(8) Users submitting a business filing that is ~~rejected~~ returned by the Secretary of State have ~~400~~ 90 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: 2-15-401, 2-15-404, MCA

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

REASONABLE NECESSITY: The proposed changes address several administrative updates.

- The system is fully implemented.
- The state's ePass login system has been discontinued.
- Business filings submitted electronically that are deficient are returned for correction, not rejected.
- The change from 100 days in the electronic repository to 90 days is proposed to better align with system functionality and reflects processing efficiencies of the system.

44.5.114 CORPORATIONS - PROFIT AND NONPROFIT FEES

(1) Domestic filings:

(a) through (e) remain the same.

(f) articles of merger or conversion 20.00

(g) through (2) remain the same.

(3) Both domestic and foreign filings:

(a) through (d) remain the same.

(e) annual report filed prior to or on April 15th 20.00

(f) through (j) remain the same.

(4) ~~Electronically filed~~ Documents returned because of deficiencies in the filing will not be assessed a ~~reprocessing~~ resubmission fee.

AUTH: 2-15-405, 35-2-1107, 35-7-103, 35-14-122, 35-14-130, MCA

IMP: 2-15-405, 35-2-119, 35-2-1003, 35-6-201, 35-14-120, 35-14-122, 35-14-130, MCA

REASONABLE NECESSITY: The changes in (1)(f), (3)(e), and (4) are proposed to provide clarity regarding current processes and terminology.

44.5.115 LIMITED LIABILITY COMPANY FEES

(1) Domestic filings:	
(a) articles of organization	\$ 35.00
<del>plus \$50.00 for each series member named in the series LLC</del>	
(b) remains the same.	15.00
(c) articles of amendment	15.00
<del>plus \$50.00 for each series member named in the series LLC</del>	
(d) remains the same.	
(e) articles of merger <u>or conversion</u>	20.00
(f) through (h) remain the same.	
(2) Foreign filings:	
(a) certificate of authority	70.00
<del>plus \$50.00 for each series member named in the series LLC</del>	
(b) amended certificate of authority	15.00
<del>plus \$50.00 for each series member named in the series LLC</del>	
(c) through (e) remain the same.	
(3) Both domestic and foreign filings:	
(a) through (c) remain the same.	
(d) annual report filed prior to <u>or on</u> April 15th	20.00
(e) through (h) remain the same.	
(i) series member added to any series LLC	<u>\$50/new member</u>
(4) <del>Electronically filed Documents returned because of deficiencies in the filing will not be assessed a reprocessing</del> <u>resubmission</u> fee.	

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

REASONABLE NECESSITY: The proposed changes simplify the rule by eliminating unnecessary repetition of fees that apply to both domestic and foreign filings. In addition, the changes in (1)(e), (3)(d), and (4) are proposed to provide clarity regarding current processes and terminology.

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) ~~(8)~~ Electronically filed Documents rejected returned because of deficiencies in the filing will not be assessed a reprocessing resubmission fee.

~~(10) Documents filed with inadequate funds will be rejected and when refiled must be accompanied by a dollar amount that satisfies the initial filing fee and includes the 50 percent reprocessing fee.~~

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

REASONABLE NECESSITY: The proposed changes address several administrative updates.

- The rule language related to the rejection of paper filings is no longer relevant or necessary as all filings are submitted electronically.
- Filings submitted that are deficient are returned for correction, not rejected and are not charged a resubmission fee.
- The system does not allow filings to be submitted without adequate funds, therefore the rule language addressing this is unnecessary.

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

~~(8) Documents filed with inadequate funds will be rejected and when refiled must be accompanied by a dollar amount that satisfies the initial filing fee and includes the 50 percent reprocessing fee.~~

AUTH: 2-15-405, MCA

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

REASONABLE NECESSITY: The proposed changes address several administrative updates.

- The rule language related to the rejection of paper filings is no longer relevant or necessary as all filings are submitted electronically.
- Filings submitted that are deficient are returned for correction, not rejected and are not charged a resubmission fee.
- The system does not allow filings to be submitted without adequate funds therefore the rule language addressing this is unnecessary.

44.5.121 MISCELLANEOUS FEES

(1) Certificate of fact \$ 15.00

~~(a) on-line certificate of fact 15.00~~

(2) Certified document(s) request per business entity ~~Copy per name for any business entity related document with or without certification~~ 10.00

~~(3) Documents or copies returned by fax 5.00~~

~~(a) (3) 24-hour priority processing handling per document or request 20.00~~

~~(b) (4) one-hour expedited processing filing for all documents 100.00~~

(c) through (f) remain the same but are renumbered (5) through (8).

(4) and (5) remain the same but are renumbered (9) and (10).

~~(6) (11) Bulk data for corporation records vary according to data type and number of documents. Please see the Secretary of State's web site. 2 cents per record~~

(7) through (11) remain the same but are renumbered (12) through (16).

~~(12) 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.~~

~~(13) (17) Electronically filed Documents rejected returned~~ because of deficiencies in the filing will not be assessed a ~~reprocessing~~ resubmission fee.

~~(14) Documents filed with inadequate funds will be rejected and when refiled must be accompanied by a dollar amount that satisfies the initial filing fee and includes the 50 percent reprocessing fee.~~

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: 2-15-403, 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

REASONABLE NECESSITY: The proposed changes address several administrative updates.

- There is only one option for certificates of fact; therefore (1)(a) is duplicative and unnecessary.
- The proposed changes clarify all document requests are certified and there is a flat fee for each request per business entity, not a fee for each document requested.
- The proposed changes to the 24-hour priority processing and the one-hour expedited processing fees eliminate the requirement for businesses to pay the fee upon each resubmission, only upon the initial submission.
- The rule language related to the rejection of paper filings is no longer relevant or necessary as all filings are submitted electronically.
- Filings submitted that are deficient are returned for correction, not rejected and are not charged a resubmission fee.
- The system does not allow filings to be submitted without adequate funds; therefore, the rule language addressing this is unnecessary.

4. With regard to the requirements of 2-4-302(1)(c), MCA, it has been determined that two of the proposed changes will have a fiscal impact. It is estimated that approximately 5,000 business will be impacted each year by the fee changes which will result in an estimated \$124,000 annual savings for those businesses. The estimated impact for each fee is below.

- ARM 44.5.121(3)(a) – Miscellaneous Fees
  - An estimated 31,000 businesses request 24-hour priority processing each year. Of those, an estimated 4,700 had to resubmit their filing due to corrections and chose to pay for priority processing on the resubmission. With this change, businesses choosing priority processing will only pay the fee upon the original submission. An estimated 4,700 businesses will save \$94,000 annually with this change.
- ARM 44.5.121(3)(b) – Miscellaneous Fees
  - An estimated 2,200 businesses request one-hour expedited processing each year. Of those, an estimated 300 had to resubmit their filing due to corrections and chose to pay for

expedited processing on the resubmission. With this change, businesses choosing expedited processing will only pay the fee upon the original submission. An estimated 300 businesses will save \$30,000 annually with this change.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Angela Nunn, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, or by e-mailing [angela.nunn@mt.gov](mailto:angela.nunn@mt.gov), and must be received no later than 5:00 p.m., August 19, 2022.

6. Austin James, Secretary of State's Office, has been designated to preside over and conduct the hearing.

7. 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 may submit their request online at <https://sosmt.gov/arm/secretary-of-state-administrative-rules/> or submit a written request which includes the name and contact information of the person who wishes to receive notices. Written requests may be mailed or delivered to the Secretary of State's Office, Administrative Rules Services, 1301 E. 6th Avenue, P.O. Box 202801, Helena, MT 59620-2801, or emailed to [sosarm@mt.gov](mailto:sosarm@mt.gov).

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

9. 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 directly impact small businesses. Based on the Montana Department of Labor and Industry's Quarterly Census of Employment and Wages, 99.9% of all Montana businesses are small businesses. Therefore, it is estimated that approximately 4,995 businesses will be positively impacted by the proposed fee changes.

/s/ AUSTIN JAMES  
Austin James  
Rule Reviewer

/s/ CHRISTI JACOBSEN  
Christi Jacobsen  
Secretary of State

Dated this 12th day of July 2022.