

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption of New)	NOTICE OF PUBLIC HEARING ON
Rules I and II, amendment of ARM)	PROPOSED ADOPTION,
44.5.111, 44.5.121, 44.6.105,)	AMENDMENT, AND REPEAL
44.6.108, 44.6.109, 44.6.201, and)	
44.6.203, and repeal of 44.2.201)	
pertaining to business entity and)	
uniform commercial code (UCC) filings)	

TO: All Concerned Persons

1. On August 26, 2008, a public hearing will be held at 10:00 a.m. in the Secretary of State's Office Conference Room, Room 260, State Capitol Building, Helena, Montana, to consider the proposed adoption, amendment, and repeal 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's office no later than 5:00 p.m. on August 19, 2008, to advise us of the nature of the accommodation that you need. Please contact Janice Doggett, P.O. Box 202801, Helena, Montana 59620-2801; telephone (406) 444-5375; fax (406) 444-3976; TDD/Montana Relay Service (406) 444-9068; or e-mail jdoggett@mt.gov.

3. The rules as proposed to be adopted provide as follows:

NEW RULE I DEFINITIONS AND REQUIREMENTS FOR ANNUAL REPORT ON-LINE 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 on-line filing system available through internet technology;

(c) "Submitter" is a person or entity that files an annual report on-line.

(2) Fees and payment methods for on-line filing of annual reports are published on-line by the private vendor.

(3) Annual reports filed through the use of internet technology are considered to be annual reports filed on-line.

(4) The following annual reports are acceptable for on-line 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) An annual report may be filed electronically 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 on-line filing:
 - (a) inactive corporations;
 - (b) inactive limited liability companies;
 - (c) corporations or limited liability companies that are pending renewal for term of existence.
- (7) On-line filing is available 24 hours a day, 7 days a week.
- (8) On-line 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. Foreign corporations and foreign limited liability companies will not be available for filing on-line after the first business day in November until the first business day in January.
- (9) Submitters will be notified through the on-line application 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) An annual report document that is successfully completed and submitted on-line will be considered filed upon receipt by the Secretary of State's office. The on-line technology application will ensure the document is properly completed prior to acceptance. The submitter will be notified by an on-line message if required fields are not properly completed. A message confirming successful completion and acceptance will appear on-line when the filing is accepted.
- (12) Submitters should print and retain their acknowledgement message as proof that the on-line filing was received by the Secretary of State's office. The acknowledgement message will contain a unique filing number, filing date, and time.
- (13) The on-line annual reports will be rejected if information is omitted.
- (14) The submitter will be notified through the on-line 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) The date and time a successfully submitted on-line filing is considered to be effective is the date and time the document was accepted by the Secretary of State's office.

AUTH: 30-9A-526, MCA
IMP: 30-9A-102, 30-9A-523, MCA

REASON: The International Association of Corporate Administrators (IACA) recommends these security procedures to clarify how on-line filings are treated. The states who are engaging in on-line filing are adopting similar rules to clarify security processes for on-line filings.

NEW RULE II NONSTANDARD INQUIRY (1) A "nonstandard" search logic is available on-line through the UCC search site. The "nonstandard" search logic results in a broader listing of debtor names being returned. The results from a "nonstandard" inquiry are not certified and should only be used to determine the name of the debtor for liens filed with the Secretary of State's office.

(a) The "nonstandard" search logic will return debtor names that contain the word(s) reflected in the registered user's search criteria.

(b) The basic "nonstandard" search logic is as follows:

(i) corporate identifiers are ignored. Refer to ARM 44.6.201(5) for list of identifiers ignored;

(ii) punctuation is ignored;

(iii) upper and lower case is ignored;

(iv) spaces are not ignored;

(v) an inquiry limited by city may not reveal all lien filings against the name being searched.

AUTH: 30-9A-526, MCA

IMP: 30-9A-102, 30-9A-523, MCA

REASON: This rule clarifies that the searches use "nonstandard" search logic. The use of "nonstandard" search logic is consistent with uniform practices recommended by IACA and is consistent with search criteria used in other states. "Nonstandard" searches return a wider range of names than exact name searches.

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

44.5.111 FORMS (1) The following shall be the official mandatory forms as prescribed by the Secretary of State. The forms are available at the Secretary of State's office, State Capitol, Room 260, P.O. Box 202801, Helena, Montana 59620-2801 or can be downloaded from: ~~http://sos.state.mt.us/css/BSB/Filing_Forms.asp~~ http://sos.mt.gov/BSB/Business_Forms.asp.

(a) Application for certificate of authority of foreign profit or nonprofit corporation ~~form number FC-4~~, shall contain the following information:

(i) remains the same.

(ii) if the name is not acceptable, the corporation must adopt an assumed business name for use in Montana;

(iii) through (ix) remain the same.

(x) if the corporation is a nonprofit corporation, which type of corporation it elects to be:

(A) through (C) remain the same.

(b) Application for amended certificate of authority of foreign corporation form number ~~FCM-6~~, shall contain the following information:

(i) ~~the date of the issuance of the certificate of authority and the name of the corporation the certificate of authority was issued to;~~

(ii) and (iii) remain the same.

(iv) the state or country of its incorporation;

~~(v) if the corporation was involved in a merger or consolidation it must list the surviving corporation and its state of jurisdiction;~~

(c) Application for withdrawal of a foreign profit corporation form number ~~FC-10~~, shall contain the following information:

(i) through (iii) remain the same.

(iv) the corporation revokes the authority of its registered agent in Montana to accept service of process on its behalf and appoints the Secretary of State as its agent for service of process ~~consents that service of process in any action, suit or proceeding based upon any on a cause of action arising in Montana may thereafter be made on it by service thereof on the Secretary of State of the state of Montana during the time it was authorized to transact business in this state;~~

(v) the mailing address to which the Secretary of State may mail a copy of any process ~~against the corporation~~ served on the Secretary of State;

(vi) remains the same.

~~(vii) if the corporation was involved in a merger it must list the surviving corporation and its state of jurisdiction and mailing address;~~

~~(viii) (vii) if a profit corporation, it has paid all taxes imposed on the corporation upon it by Title 15, MCA, have been paid, supported by a certificate by the Department of Revenue to be attached to the application to the effect that the department is satisfied from the available evidence that all taxes imposed have been paid. and must attach a certificate by the department of revenue to the effect that the department of revenue is satisfied from the available evidence that all taxes imposed by Title 15, MCA, have been paid.~~

(d) Application for withdrawal of a foreign nonprofit corporation shall contain the following information:

(i) the name of the corporation;

(ii) the state of jurisdiction;

(iii) the corporation is not transacting business and surrenders its authority to transact business in this state;

(iv) the corporation revokes the authority of its registered agent in Montana to accept service of process on its behalf and appoints the Secretary of State as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state;

(v) the mailing address to which the Secretary of State may mail a copy of any process served on the Secretary of State;

(vi) an assurance the corporation will notify the Secretary of State of any change of its mailing address.

~~(d) (e)~~ Montana annual corporate report form; shall contain the following information:

(i) through (ix) remain the same.

- (x) shareholders' names, addresses, and number of shares for professional service corporations only;
- (xi) whether or not the corporation has members.

AUTH: 35-1-1307, MCA
 IMP: 35-1-1308, MCA

REASON: Form numbers are no longer used so this rule reflects the name of the forms instead of form numbers. The web site address is updated. A new section of this rule specifically refers to foreign nonprofit corporations. This simply clarifies the application of the rule and further reflects the current statutory application. This rule also clarifies that the tax clearance certificate is required for foreign as well as domestic profit corporations. Changes in statutory language regarding service of process to appoint the Secretary of State are reflected in this rule and add a provision to clarify that corporate annual report forms for a nonprofit corporation must state whether the corporation has members. The new language reflects statutory changes.

44.5.121 MISCELLANEOUS FEES

- (1) and (2) remain the same.
- (3) Business Services Documents or copies returned by fax

up to 10 pages	3.00 <u>5.00</u>
(a) each additional page over 10	.50
- (b) through (d) remain the same but are renumbered (a) through (c).
- (d) registering a commercial registered agent 150.00
- (e) registering a nonqualified foreign entity 70.00
- (4) Bulk data for corporation records ~~varies~~ vary according to data type and number of documents. Please see the Secretary of State's web site.

AUTH: 2-6-103, 2-15-405, 30-9A-525, 35-1-1206, 35-1-1307, 35-2-1107, MCA
 IMP: 2-15-405, 30-9A-525, 30-13-320, 35-1-1206, 35-2-119, 35-2-1003, 35-7-101, ~~35-8-211~~, MCA

REASON: Streamlining fees will eliminate payment and billing for most corporate filings. This rule will not result in additional revenue to the Secretary of State's office. Applying a fixed rate will be convenient for customers. Fees will remain commensurate with costs. This fee change will actually save many customers money. This fee change will affect approximately 103,000 Business Services clients. This rule also implements a fee structure for the Model Registered Agent Act that was passed in the 2007 legislative session and will affect approximately ten entities that are likely to become commercial registered agents.

44.6.105 FEES FOR FILING DOCUMENTS -- UNIFORM COMMERCIAL CODE (1) The Secretary of State and the county clerk and recorder shall charge and collect for:

- (a) through (l) remain the same.

(m) copies of Uniform Commercial Code documents, ~~\$.50 per page~~ \$5.00 per search request form.

(2) and (3) remain the same.

AUTH: 2-15-405, 30-9A-525, 30-9A-526, MCA

IMP: 30-9A-501, 30-9A-502, 30-9A-525, 71-3-125, MCA

REASON: This rule will not result in additional revenue to the Secretary of State's office. Fees will remain commensurate with costs. The fee of \$5.00 per request "form" allows for copies of multiple filing numbers and copies of all filings associated with a particular debtor. This fee change will actually save many customers money. This also makes the UCC unit's copy practices consistent with the corporation unit's copy practices and streamlines the billing and accounting procedures in the Secretary of State's office. This rule affects approximately 2,000 customers who file Uniform Commercial Code filings.

44.6.108 FORMAT REQUIREMENTS FOR THE FILING OF UNIFORM COMMERCIAL CODE LIENS (1) remains the same.

(2) All Uniform Commercial Code liens are required to be filed on one of the following national forms or they will be rejected:

(a) through (m) remain the same.

~~(n) consumer goods refiling.~~

(n) tribal forms.

(3) The forms listed in (2), as they existed on ~~August 29, 2003~~ May 1, 2008, are herein incorporated by reference. Copies of the forms listed in (2)(a) through (h), (m), and ~~(n)~~ (l) are available at ~~www.sos.state.mt.us~~ www.sos.mt.gov. Copies of the forms listed in (2)(i) through (k) are available at ~~www.irs.gov~~ only to the Internal Revenue Service. Copies of the form listed in (2)(l) are available only to the Montana Department of Public Health and Human Services at www.dphhs.state.mt.us.

AUTH: 30-9A-526, MCA

IMP: 30-9A-102, 30-9A-501, 30-9A-502, MCA

REASON: This rule eliminates a reference to a consumer goods refiling form that was used for the transition from county to state filings. The transition period is over and the form is no longer necessary. This rule adds tribal filing forms to reflect the existence of tribal compacts that will allow for tribal lien filings with the Secretary of State's office. The rule also gives the office's new web address.

44.6.109 FORMAT REQUIREMENTS FOR FILING AN EFFECTIVE FINANCING STATEMENT LIEN UNDER THE FEDERAL FOOD SECURITY ACT OF 1985 (1) remains the same.

(2) Effective financing statement lien filings must be filed on the following forms or they will be rejected:

(a) Montana's effective financing statement;

(b) Montana's effective financing statement amendment;

- (c) Montana's effective financing statement addendum; or
- (d) Montana's effective financing statement amendment addendum.
- (3) The forms listed in (2), as they existed on August 29, 2003, are ~~herein~~ incorporated by reference and are available at www.sos.state.mt.us.
www.sos.mt.gov.
- (4) The following minimum required information must be included on all effective financing statements or they will be rejected:
 - (a) through (d) remain the same.
 - (e) signature of the debtor signed, authorized, or otherwise authenticated by the debtor;
 - (f) through (h) remain the same.
 - (i) signature of the secured party signed, authorized, or otherwise authenticated by the secured party.
- (5) An amendment to an effective financing statement is required when a change would render the farm bill master list entry no longer informative as to what is subject to the security interest in question. The effective financing statement amendment form must be used and must include:
 - (a) the secured party's signature an amendment including terminations that must be signed, authorized, or otherwise authenticated by the secured party; and
 - (b) the debtor's signature. an amendment modifying the debtor and/or collateral information that must be signed, authorized, or otherwise authenticated by the debtor;
 - (i) An amendment that is a continuation statement does not require the signature of the debtor.
 - (c) an original filing number on file with the Secretary of State's office;
 - (d) only one filing number per form;
 - (e) only one amendment per form is permitted;
 - (f) the name of a debtor currently reflected on the Secretary of State's records for the original filing number being amended; and
 - (g) the name of a secured party currently reflected on the Secretary of State's records for the original filing number being amended.

AUTH: 30-9A-526, MCA

IMP: 30-9A-501, 30-9A-502, 71-3-125, MCA

REASON: This rule incorporates Federal Farm Security Act amendments that allow for electronic authentications. The Secretary of State is committed to allowing eCommerce to exist whenever possible and has amended the state rules to follow the federal authority for electronic filings. The new rule also gives the office's new web address.

44.6.201 DEFINING SEARCH CRITERIA FOR UNIFORM COMMERCIAL CODE CERTIFIED SEARCHES (1) The Secretary of State provides information regarding centrally filed uniform commercial code records ~~from~~ via requests to office staff and via the Secretary of State's web site. ~~These searches are certified for their accuracy. These certified searches use "standard" search logic as described below.~~

(2) through (5)(x) remain the same.

- (xi) corporations;
- (xii) through (xxii) remain the same.
- (xxiii) joint venture;
- (xxiv) through (xxx) remain the same.
- (xxxi) limited liability partnership;
- (xxxii) through (xlvi) remain the same but are renumbered (xxxii) through (xlix).
- ~~(xlix)~~ (l) registered limited liability partnership;
- (li) through (liii) remain the same but are renumbered (li) through (liv).
- (6) and (7) remain the same.
- (8) Only one debtor name is permitted per search request form.

AUTH: 2-15-404, ~~30-9-407~~, 30-9A-526, MCA

IMP: ~~30-9-403, 30-9-421~~, 30-9A-516, 30-9A-519, 30-9A-522, 30-9A-526, MCA

REASON: This rule corrects a typographical error and includes limited liability partnerships that had been inadvertently excluded from the rule. The rule also clarifies that searches are limited to one debtor in order to accommodate an electronic filing system to be used by the Secretary of State's office. The rule also clarifies that standard search logic is used for all searches performed under the rule.

44.6.203 REQUIREMENTS FOR FILING UCC AMENDMENTS (1) In addition to the requirements of 30-9A-512, MCA, the following information needs to be included:

- (a) the name of ~~the debtor(s)~~ a debtor currently reflected on the Secretary of State's records for the original filing number being amended on file with the Secretary of State;
 - (b) the name of ~~the a secured party(ies)~~ currently reflected on the Secretary of State's records for the original filing number being amended on file with the Secretary of State; and
 - (c) the original filing number on file with the Secretary of State;
 - ~~(d)~~ (i) only one filing number per form is permitted.
- (2) Multiple amendments, ~~other than terminations~~, may not be submitted on one form.

AUTH: 30-9A-526, MCA

IMP: 30-9A-519, MCA

REASON: This rule cleans up language that was confusing and standardizes our practices with that of other states to allow one amendment per form. This will also be necessary for the implementation of the office's new electronic filing and retention system.

5. The Secretary of State proposes to repeal the following rule:

44.2.201 FEES FOR RECEIPT OF FACSIMILE FILING OF DOCUMENTS
found at ARM page 44-17.

AUTH: 30-9-403, 30-13-217, 30-13-311, 35-1-1201, 35-2-1001, 35-12-521, MCA
IMP: 30-9-403, 30-13-217, 30-13-311, 35-1-1201, 35-2-1001, 35-12-521, 71-3-125,
MCA

REASON: This rule is unnecessary since fees for facsimile filing are found in another rule.

6. 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: Tana Gormely, Deputy for Business Services for the Secretary of State, P.O. Box 202801, Helena, Montana 59620-2801, telephone (406) 444-2896, fax (406) 444-3976, or e-mail tgormely@mt.gov, and must be received no later than 5:00 p.m., August 28, 2008.

7. Janice Doggett, Chief Legal Counsel and Assistant Chief Deputy for the office, has been appointed to preside over and conduct this hearing.

8. The department 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 that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. 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 Jean Branscum, P.O. Box 202801, Helena, Montana 59620-2801, telephone (406) 444-5596, fax (406) 444-4263, e-mail jabranscum@mt.gov, 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 notice requirements of 2-4-302, MCA, do not apply.

/s/ Janice Doggett

Janice Doggett
Rule Reviewer

/s/ Brad Johnson

Brad Johnson
Secretary of State

Dated this 21st day of July 2008.