

BEFORE THE SECRETARY OF STATE  
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I pertaining to the acceptance of electronic records and electronic signatures by the Business Services Division and repeal of ARM 44.5.201 pertaining to filing for certification authorities statement	)	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND REPEAL
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TO: All Concerned Persons

1. On December 16, 2011, at 9:30 a.m., the Secretary of State will hold a public hearing in the Secretary of State's Conference Room, Room 206, State Capitol Building, at Helena, Montana, to consider the proposed adoption 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 no later than 5:00 p.m. on December 2, 2011, 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, Montana, 59620-2801; telephone (406) 461-5173; fax (406) 444-4240; TDD/Montana Relay Service (406) 444-9068; or e-mail jquintana@mt.gov.

3. The rule as proposed to be adopted provides as follows:

NEW RULE I 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 44.5.301 and 44.6.113.

(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 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) be unique to the person using it;

(b) either have an electronic authentication process attached or must be logically associated with the document;

(c) be capable of verification so that the acceptor of the electronically signed document can verify that the document was electronically signed by the person;

(d) be under the sole control of the person using it; and

(e) be linked to the data in such a manner that if the data are changed, the digital signature is invalidated.

(5) The name and title of the person signing digitally shall also be provided.

AUTH: 30-18-118, MCA

IMP: 30-18-117, MCA

REASON: The Secretary of State proposes the adoption of this rule to accommodate those entities in the business community whose internal business processes utilize electronic signatures. The Secretary of State has only agreed to conduct transactions by electronic means for annual reports and certain Uniform Commercial Code documents. It currently lacks the ability to accept electronic transactions for any other Business Services Division documents. In the interest of cooperating with the business community, the Secretary of State proposes this rule in order to accept documents that contain electronic signatures that meet the criteria set forth in this rule. The requirements for acceptance of an electronic signature are reasonably necessary to ensure that the signature is authentic without causing an undue burden on those who wish to use electronic signatures. The requirements were selected by examining other administrative rules concerning electronic signatures and relevant literature on their use.

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

44.5.201 FILING FOR CERTIFICATION AUTHORITIES

AUTH: 2-20-110, MCA

IMP: 2-20-109 MCA

REASON: In 2007, the Montana Legislature repealed the Electronic Transactions with State Agencies and Local Governments Act, including 2-20-110, MCA, which required that the Secretary of State register certification authorities and repositories. As a result, this rule is no longer necessary and is without authority. Therefore, it is reasonably necessary that the Secretary of State repeal the rule.

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: Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801; telephone (406) 461-5173; fax (406) 444-4240; or e-mail [jquintana@mt.gov](mailto:jquintana@mt.gov), and must be received no later than 5:00 p.m., December 23, 2011.

6. Jorge Quintana, Secretary of State's Office, has been designated to preside over and conduct this 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 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 the contact person in 5 above or may be made by completing a request form at any rules hearing held by the Secretary of State.

8. 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.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary sponsor, Representative Bob Lawson, was contacted by regular mail on May 31, 2011, at his mailing address.

/s/ Jorge Quintana  
JORGE QUINTANA  
Rule Reviewer

/s/ Linda McCulloch  
LINDA MCCULLOCH  
Secretary of State

Dated this 14th day of November, 2011.