

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 44.5.121 pertaining to) PROPOSED AMENDMENT
miscellaneous fees charged by the)
Business Services Division)

TO: All Concerned Persons

1. On June 13, 2014, 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 rule.

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 May 30, 2014, 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) 461-5173; fax (406) 444-4249; TDD/Montana Relay Service (406) 444-9068; or e-mail jquintana@mt.gov.

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

44.5.121 MISCELLANEOUS FEES (1) through (6) remain the same.
(7) Surety bond, cashier's check, or certificate of deposit 15.00
(8) Designation of registered agent for pesticide license 5.00
(7) and (8) remain the same, but are renumbered (9) and (10).

AUTH: 2-15-405, 30-9A-526, 35-1-1307, 35-2-1107, 35-7-103, MCA
IMP: 2-6-103, 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 required by 2-15-405, MCA, to "set by administrative rule each fee authorized by law." Each fee "must be commensurate with the overall costs of the office," "must reasonably reflect the prevailing rates charged in the public and private sectors for similar services," and "fees collected by the secretary of state must be deposited to an account in the enterprise fund type to the credit of the secretary of state." An "enterprise fund" structure means the Secretary of State operates as a proprietary fund agency. It is financed and operated similar to a private business where it is the Legislature's intent to finance or recover all costs primarily through user charges. See Montana Operations Manual, 302 Government Accounting Overview.

Therefore, when the Legislature enacted 2-15-405, MCA, its intent was to codify into law the fact that the Secretary of State's funding structure is that of a proprietary nature and that a fee is to be charged for the services it offers.

Although the Secretary of State has always charged a fee for the filing of surety bonds, cashier's checks, and certificates of deposit mandated by statute, the Secretary of State is now complying with the requirement of 2-15-405, MCA, to set out those fees in rule. Although the statutes imposing the filing duties in 20-7-604, MCA, and 82-1-104, MCA, do not state that the Secretary of State may charge a fee for these services, the Secretary of State believes 2-15-405, MCA, is the requirement in law that a fee be charged for the services provided.

The Secretary of State has added (8) to set forth in rule the filing fee for the designation of a registered agent for a pesticide license to comply with 2-15-405 and 80-8-210, MCA.

The implementation statutes were reviewed and updated.

4. Pursuant to 2-4-302, MCA, the Secretary of State has determined the cumulative dollar amount for all persons of the proposed fee in (7) is \$600 and the number of persons affected is 40 based on the historical annual filing data for surety bonds, cashier's checks, and certificates of deposit.

5. Pursuant to 2-4-302, MCA, the Secretary of State has determined the cumulative dollar amount for all persons of the proposed fee in (8) is \$300 and the number of persons affected is 60 based on the historical annual filing data for filing the designation of registered agent for pesticide licenses.

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., June 20, 2014.

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 the amendment of the above-referenced rule 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 12th day of May, 2014.