

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption of New)	NOTICE OF PUBLIC HEARING ON
Rule I and amendment of ARM)	PROPOSED ADOPTION AND
44.6.110, 44.6.113, 44.6.202, and)	AMENDMENT
44.6.203 pertaining to the Secretary)	
of State's electronic filing system, the)	
filing of a Title 71 lien, and)	
requirements for filing UCC)	
amendments with the Business)	
Services Division)	

TO: All Concerned Persons

1. On July 9, 2015, 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 adoption and 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 June 25, 2015, 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) 431-7718; fax (406) 444-4249; 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 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 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) SIMS 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) The SIMS application 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 a 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) Password complexity for online users is consistent with Department of Administration standards.

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

(9) SIMS 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.

AUTH: 2-15-404, MCA

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

REASON: The Secretary of State has implemented the first phase of the electronic online filing system authorized by 2-15-404, MCA. The first phase allows the filing of Uniform Commercial Code documents online. Future phases will be implemented later this year to allow the online filing of many business documents required to be filed with the Secretary of State. This rule is proposed to meet the requirements of 2-15-404, MCA.

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

44.6.110 DEFINITIONS AND FORMAT REQUIREMENTS FOR THE FILING OF A TITLE 71 LIEN (1) through (2)(a) remain the same.

(b) the social security number and/or federal tax ID number for every debtor listed if the lien is to appear on the farm bill master list per 7 U.S.C. § 1631;

(c) through (g) remain the same.

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

IMP: 2-15-401, 2-15-404, 30-9A-502, 71-3-125, MCA

REASON: The Secretary of State is amending (2)(b) to clarify that a social security number and/or federal tax ID number need only be supplied if the lien is to appear on the Farm Bill Master List because of the federal law requiring those liens to contain that information. The authority and implementation statutes were reviewed and updated.

44.6.113 DEFINITIONS AND REQUIREMENTS FOR ONLINE FILING

(1) The following definitions apply for filing Uniform Commercial Code (UCC) liens and amendments online:

(a) "B2B" means business to business filings.

(b) "ePass" is the state of Montana's online access portal.

(c) "PCI" means payment card industry.

(d) "SIMS" is the secretary of state's online information management system.

~~(a) (e) "Submitter" is a person or entity that files a Uniform Commercial Code document who, after having been authenticated to SIMS via ePass, is able to file lien notices or amendments or perform lien searches online;~~

~~(b) "compliance technician" is a person who works in the secretary of state's office who is qualified to certify that a lien document meets the requirements of state and federal laws.~~

(2) Fees and payment methods for online filing of Uniform Commercial Code UCC liens and the federal farm bill liens and amendments are by credit and/or debit card.

(3) through (8) remain the same.

(9) A Uniform Commercial Code document UCC and effective financing statement lien notices or amendments that is are successfully completed and submitted online will be considered filed upon receipt by the secretary of state's office once payment has successfully been completed by the submitter. The online technology application will ensure the document is properly completed prior to acceptance structure of the online screens will guide the submitter while ensuring the notice or amendment adheres to all rules, laws, and regulations that govern the document. The submitter ~~will be notified by an online message if required fields are not properly completed~~ is notified by SIMS if the information entered does not adhere to the requirements that govern lien notices and amendments. A message confirming successful completion and acceptance will appear online when the filing is accepted by SIMS.

(10) Submitters should print and retain their acknowledgement ~~message as proof that the online filing was received~~ and the filed document as proof that the online filing was received and recorded by the secretary of state's office. The acknowledgement ~~message~~ will contain a unique filing number, filing date and time, filing type, debtor(s) information, secured party(ies) information, and filing language.

(11) The following online filings will be rejected:

(a) a filing that is not machine readable when submitted via the B2B submission method; or

(b) remains the same.

(12) The submitter will be notified ~~by an online message~~ if their document is rejected. If a filing is later determined to be improper under 30-9A-420, MCA, the secretary of state's office will notify the submitter of the rejection.

(13) remains the same.

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

IMP: 2-15-401, 2-15-404, 30-9A-502, 71-3-125, MCA

REASON: The proposed amendments are reasonably necessary to update existing rule language to conform to the online filing requirements for Uniform Commercial Code lien notices filed through the Secretary of State's newly implemented online information management system (SIMS). The authority and implementation statutes were reviewed and updated.

44.6.202 EFFECTIVE DATE AND TIME (1) Any filing lien notice or amendment delivered by the postal service by 4:00 p.m. has an effective time and

date as of 8:00 a.m. on the delivery date. Any lien notice or amendment delivered by facsimile, walk-in, or express delivery service by 4:00 p.m. has an effective time and date consistent with the delivery date and time. Filings received after 4:00 p.m. have the next business day's effective date.

(2) Any filing received by fax, lien notice or amendment delivered by the postal service, facsimile, walk-in, or express delivery service will have the same date and time as received after 4:00 p.m. has an effective time and date of 8:00 a.m. the next business day.

(3) Any lien notice or amendment filed online through the secretary of state's electronic filing system will receive the effective date and time the same as it was successfully recorded in the UCC database.

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

IMP: 2-15-401, 2-15-404, 30-9A-519, 71-3-125, MCA

REASON: The amendments are reasonably necessary to clarify that Uniform Commercial Code documents delivered for filing by 4:00 p.m. will receive an effective date and time of 8:00 a.m. on the delivery date, Uniform Commercial Code documents delivered for filing after 4:00 p.m. will receive an effective date and time of 8:00 a.m. the next business day, and that Uniform Commercial Code documents filed online through the Secretary of State's information management system (SIMS) will receive the effective date and time the same as when they are successfully recorded. The authority and implementation statutes were reviewed and updated.

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 a debtor currently reflected on the Secretary of State's records for the original filing number being amended;~~

~~(b) the name of a secured party currently reflected on the Secretary of State's records for the original filing number being amended; and~~

~~(c) the original initial filing number on file with the secretary of state must be included; and~~

~~(f) only one filing number per form is permitted.~~

~~(2) remains the same.~~

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

IMP: 2-15-401, 2-15-404, 30-9A-519, MCA

REASON: The amendments are proposed to harmonize the Secretary of State's filing requirements to Revised Article 9 of the Uniform Commercial Code. The authority and implementation statutes were reviewed and updated.

5. 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., July 16, 2015.

6. 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.

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 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.

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, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the Secretary of State has determined that the adoption and amendment of the above-referenced rules 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 1st day of June, 2015.