



Montana Legislative Services Division
Legal Services Office

TO: State Administration and Veterans' Affairs Interim Committee

FROM: K. Virginia Aldrich

DATE: August 10, 2017

RE: Legislative Administrative Rule Review Report

Pursuant to 5-5-228, MCA, the State Administration and Veterans' Affairs Interim Committee is responsible for reviewing administrative rules within its jurisdiction. Staff for the State Administration and Veterans' Affairs Interim Committee has prepared this report for informational purposes only. This report does not represent any action or opinion of the State Administration and Veterans' Affairs Interim Committee and does not preclude additional action that may be taken by the State Administration and Veterans' Affairs Interim Committee pursuant to its authority under the Montana Administrative Procedure Act (Title 2, chapter 4, MCA).

MAR NOTICE NUMBER: 44-2-227

AGENCY/BOARD: Secretary of State

RULE CLASSIFICATION: (e.g. substantive/interpretive/emergency/temporary): Substantive

SUBJECT: Online Filing of Online Reports

NOTICE DESCRIPTION: (e.g. proposal notice/adoption notice): Notice of Public Hearing on Proposed Amendment

SUMMARY OF RULE(S):

The Secretary of State (SOS) proposes to amend three rules pertaining to the online filing of annual reports.

The Secretary of State proposes to delete references to the acronym "SIMS" (Secretary of State's Information Management System) in a rule concerning the statewide electronic filing system for business documents because the Secretary of State is not using the acronym as part of the operational system's environment. The proposed changes also delete the requirement that users set up a ePass account through the state of Montana's online access portal because "users may not be required to establish an account through ePass in all circumstances." However, 2-15-404, MCA, does require the Secretary of State to adopt rules that "prescribe an identification procedure for a person filing records or other documents or otherwise accessing the system." It is unclear under current rules how authentication for individuals accessing the system will be established once this provision is stricken. However, there is no requirement that any new policy requirements concerning authentication be addressed in the same rule notice.

Because the newest iteration of the Secretary of State's electronic filing system does not have the same restrictions as previous systems, the Secretary of State proposes to revise a rule relating to definitions and requirements of the system. Specifically, the Secretary of State proposes to delete definitions relating to both individuals submitting corporate and LLC annual reports and Secretary of State personnel that certify annual report requirements. The proposed amendments delete certain requirements for and specifications concerning limited types of annual reports that may be filed online, effectively expanding what may be filed online. The proposed amendments also delete the requirement that a filed original or reproduced paper document must be signed by an authorized agent, presumably because these documents will now be filed electronically. Rather than being restricted in December like other regularly filing domestic corporations or domestic limited liability companies or between November and December like other regularly filing foreign corporations and foreign limited liability companies, the proposed amendments also allow dissolved and revoked entities applying for reinstatement or recertification to file at any time.

Lastly, the Secretary of State also proposes to require all for profit and nonprofit corporate annual reports and limited liability company annual reports to be filed online, rather than online or in a hard copy.

The proposed amendments also update the statutory authority and implementation authority for the rules at issue and make minor changes in style and phrasing.

NOTES: A public hearing is scheduled for August 24, 2017, at 9:30 a.m. in Room 260, State Capitol Building, Helena, Montana. The public comment period ends on September 1, 2017.

FULL TEXT OF NOTICE: The full text of the notice proposal may be found online at http://www.mtrules.org/gateway/Cycle_Home.asp?CID=2552.

Cla292 7227gafa.