

**WEST VIRGINIA  
SECRETARY OF STATE  
BETTY IRELAND  
ADMINISTRATIVE LAW DIVISION**

Form #7

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2005 MAY 10 P 4:18

OFFICE WEST VIRGINIA  
SECRETARY OF STATE  
Effective Date

**NOTICE OF AN EMERGENCY RULE**

AGENCY: Secretary of State TITLE NUMBER: 153

CITE AUTHORITY: §39A-3-3(a)

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 30

TITLE OF RULE BEING AMENDED: USE OF DIGITAL SIGNATURES, STATE CERTIFICATE  
AUTHORITY AND STATE REPOSITORY

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME  
EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER  
FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE  
AS FOLLOWS:

SB 639 passed the 2005 Legislature April 8, 2005 and signed by the Governor on May 4, 2005 states:  
"The Secretary of State shall propose emergency and legislative rules for promulgation in accordance with the provisions of  
article three, chapter twenty-nine-a of this code to establish standards and processes to facilitate the use of electronic  
signatures in all governmental transactions by state agencies subject to chapter twenty-nine-a of this code. The rules shall  
include minimum standards for secure transactions to promote confidence and efficiency in legally binding electronic  
document transactions. The rules may be amended from time to time to keep the rules current with new developments in  
technology and improvements in secured transaction processes."

  
Authorized Signature

Use additional sheets if necessary

The purpose of this rule is to allow state, county and municipal agencies to use electronic signature technology with sound security controls to replace manual signatures on documents. This technology will encourage electronic transactions within and among agencies and between the general public and governmental agencies and reduce cost and delays.

The rule allows selection of an existing federal program as the state certificate authority and repository, thereby saving the entire cost of establishing a state certificate authority.



**EMERGENCY RULE QUESTIONNAIRE**

DATE: 5/5/2005

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) Betty Ireland

Betty Ireland  
Secretary of State  
Bldg 1, Suite 157K  
Charleston, WV 25305-0770

EMERGENCY RULE TITLE: Use of Digital Signatures, State Certificate Authority and State R

1. Date of filing 5/10/2005

2. Statutory authority for promulgating emergency rule:  
§39A-3-3(a)

3. Date of filing of proposed legislative rule: 5/10/2005

4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule? This is an amendment to an existing rule

5. Has the same or similar emergency rule previously been filed and expired?  
No

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the **immediate** preservation of public peace, health, safety or welfare.

N/A

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

The Legislature specifically authorized the promulgation of this emergency rule in order to implement as soon as possible.

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8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

N/A

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APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: Use of Digital Signatures, State Certificate Authority and State Repository

Type of Rule:  Legislative  Interpretive  Procedural

Agency: Secretary of State

Address: Building 1, Room 157-K  
1900 Kanawha Blvd. East  
Charleston, WV 25305

Phone Number: (304) 558-6000 Email: dkimble@wvsos.com

**Fiscal Note Summary**

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The rule allows selection of an existing federal program as the state certificate authority and repository, thereby saving the entire cost of establishing a state certificate authority as defined in the original rule.

The costs associated with this program are minimal and will be balanced over time by cost savings through replacement of paper filing with electronic filing.

**Fiscal Note Detail**

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	2005 Increase/Decrease (use "-")	2006 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	3,000.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	2,000.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Equipment	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: Use of Digital Signatures, State Certificate Authority and State Repository

**3. Explanation of above estimates (including long-range effect):**

Please include any increase or decrease in fees in your estimated total revenues.

Minimal costs may be associated with initial implementation of the federal certificate authority program. These costs are for computer hardware and configuration services (2005 estimate). This program provides an alternative to the previously defined state certificate authority, which was estimated to cost the state in excess of \$350,000.

Costs to any state agency adopting the program will depend on a number of factors, including the number of employees purchasing a digital signature certificate for state use (certificates cost \$30-\$35 each), the type and complexity of implementation of electronic filings on which digital signatures are accepted, and other factors. However state agencies adopting electronic filing with digital signatures are expected to save substantially by accepting filings in electronic form as compared to the cost of accepting and processing filings on paper. For this reason, the net cost is estimated to be \$0.

In the long term, the State should realize overall cost savings through the implementation of digital signature technology.

**MEMORANDUM**

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

As described above, the costs and benefits of this program are believed to balance. Little data is available on which to base hard estimates of the costs and benefits of the program.

Date: \_\_\_\_\_

Signature of Agency Head or Authorized Representative  
\_\_\_\_\_

FILED

TITLE 153  
LEGISLATIVE RULE  
SECRETARY OF STATE

2005 MAY 10 P 4:19

SERIES 30  
USE OF DIGITAL SIGNATURES, STATE CERTIFICATION CERTIFICATE AUTHORITY  
AND STATE REPOSITORY

OFFICE WEST VIRGINIA  
TREASURY

**§153-30-1. General.**

1.1. Scope. -- This legislative rule establishes the requirements for state agencies intending to use or accept electronic signatures on filings and other messages in electronic form which require the signature of an authorized person.

1.2. Authority. -- W. Va. Code §39A-3-3.

1.3. Filing Date. -- ~~June 21, 2002.~~

1.4. Effective Date. -- ~~June 21, 2002.~~

**§153-30-2. Definitions**

2.1. The definitions of terms established in W. Va. Code §§39A-1-2 and 39A-3-1 shall apply when those terms are used in this rule.

~~2.1.~~ 2.2. "Accept an electronic signature" means to accept an electronic record that requires the signature of an authorized person when that electronic record contains an electronic signature in lieu of an original signature.

~~2.2. "Agency" includes any state, county or municipal office, department, division, bureau, board, commission, public corporation or other governmental entity created by the State Constitution, statute, rule or executive order.~~

2.3. "Assurance level" means the degree of certainty that the user of an electronic signature has presented an identifier or credential that refers to his or her identity. For the purpose of this rule, assurance levels defined by the United States Office of Management and Budget in the Memorandum M-04-04, E-Authentication Guidance for Federal Agencies dated December 16, 2003 shall be adopted, as follows:

2.3.1. 'Level 1' means little or no confidence in the asserted identity's validity;

2.3.2. 'Level 2' means some confidence in the asserted identity's validity;

2.3.3. 'Level 3' means high confidence in the asserted identity's validity; and

2.3.4. 'Level 4' means very high confidence in the asserted identity's validity

~~2.3.~~ 2.4. "Authorized officer" means the elected or appointed official, or a designee, who has authority to act on behalf of the agency.

~~2.4.~~ 2.5. "Certification Certificate practice statement" or "certificate policy" means a declaration of the practices that a ~~certification certificate~~ authority employs in issuing, managing, suspending, and revoking certificates and providing access to them.

~~2.5. "Corresponding," with reference to keys, means to belong to the same key pair.~~

~~2.6. "Electronic" means electrical, digital, magnetic, optical, electromagnetic, or any other technology that is similar to these technologies.~~

~~2.7. "Electronic record" means a record generated, communicated, received, or stored by electronic means.~~

~~2.8. "Electronic signature" means any identifier or authentication technique attached to or logically associated with an electronic record that is intended by the person using it to have the same force and effect as a manual signature. Electronic signatures include, but are not limited to digital marks and digital signatures:~~

~~2.9. A "digitized signature" which may consist of a handwritten signature entered on a recording device utilizing electronic recording software which simultaneously converts the image created to a digital record and attaches it to the electronic document to which it relates or a graphic image file of a person's signature and is attached to the electronic document to which it relates may be used for illustrative purposes and shall not be construed as or considered an "electronic signature" in the context of this legislation.~~

2.6. "Electronic postmark" means an electronic service provided by the United States Postal Service that provides evidentiary proof that an electronic document existed in a certain form at a certain time and the electronic document was opened or the contents of the electronic document were displayed at a time and date documented by the United States Post Office.

2.7. "Federal certificate authority and repository program" means an official program established by an agency of the United States government for the issuance and authentication of digital signature certificates or other secure electronic authorizations to individuals for use in transactions.

~~2.10. "Key pair" means two corresponding keys, referred to as a private key and a public key, which are mathematically related in an asymmetric cryptosystem, where:~~

~~2.10.a. "Private key" means the key of a key pair used to create a digital signature;~~

~~2.10.b. "Public key" means the key of a key pair used to verify a digital signature; and~~

~~2.10.c. The corresponding keys have the properties that:~~

~~2.10.c.1. The private key can encrypt a message which only the public key can decrypt; and~~

~~2.10.c.2. Even if the public key is known, it is computationally infeasible to discover the private key.~~

~~2.11.~~ 2.6. "Operational period" of a certificate begins on the date and time the certificate is issued by the certification authority (or on a later date and time certain if stated in the certificate) and ends on the date and time it expires as noted in the certificate, or is earlier revoked, but does not include any period during which a certificate is suspended.

2.12. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic

~~or other medium and is retrievable in perceivable form, which includes an official record, including but not limited to a message, document, form, return or other instrument which is transmitted electronically from an authorized officer or other person to an agency to meet the requirements of law or to execute an essential transaction. An informal communication will not be considered an electronic record for purposes of this rule.~~

~~2-13:~~ 2.7. "Repository" means a system for issuing, storing, retrieving, managing, and processing digital signature/mark certificates and any other relevant information, including information relating to the status of a certificate.

~~2-14:~~ 2.8. "State certificate processing authority and repository" means an entity authorized by a program designated and approved by the Secretary of State under the provisions of section seven of this rule or established under section nine of this rule with which the State of West Virginia contracts to issue certificates on behalf of the State and provide repository services.

~~2-15:~~ 2.9. "Subscriber" means a person who:

~~2-15.a:~~ 2.9.a. Is the subject named or otherwise identified in a certificate;

~~2-15.b:~~ 2.9.b. Controls the private key that corresponds to the public key listed in that certificate;  
and

~~2-15.c:~~ 2.9.c. Is the person to whom digitally signed messages verified by reference to the certificate are ~~to be~~ attributed.

~~2-16:~~ 2.9. "Trustworthy system" means computer hardware, software, and procedures that:

~~2-16.a:~~ 2.9.a. Are reasonably secure from intrusion and misuse;

~~2-16.b:~~ 2.9.b. Provide a reasonably reliable level of availability, reliability, and correct operation;

~~2-16.c:~~ 2.9.c. Are reasonably suited to performing their intended functions; and

~~2-16.d:~~ 2.9.d. Adhere to generally accepted security principles.

2.10. "Type of electronic signature" means the specific technology used to create, apply and validate the electronic signature and the level of assurance of identity provided by the process of issuance.

### **§153-30-3. Agency Use of Electronic Records and Electronic Signatures Generally.**

3.1. Each agency shall determine ~~if, and~~ the extent to which; it will send and receive electronic records and electronic signatures to and from other persons and otherwise create, use, store, and rely upon electronic records and electronic signatures.

3.2. In any case where an agency decides to send or receive electronic records, or to accept document filings by electronic records, the agency may, giving due consideration to security, specify:

3.2.a. The manner and format in which the electronic records must be created, sent, received, and stored;

3.2.b. ~~If the electronic records must be signed,~~ The type of electronic signature or electronic postmark that is required or acceptable, the assurance level required for the transaction, the manner and

format in which the signature must be affixed to the electronic record, and the ~~identity of, or~~ criteria that must be met by; any third party used by the sender of the electronic record to facilitate the process;

3.2.c. ~~Control~~ Processes and procedures ~~as appropriate~~ to ensure adequate integrity, security, confidentiality, and auditability of the electronic records; and

3.2.d. Any other required attributes for the electronic records that are currently specified for corresponding paper documents, or reasonably necessary under the circumstances.

3.3. Whenever any rule of law requires or authorizes the filing of any information, notice, lien, or other document or record with any agency, a filing made by an electronic record has the same force and effect as a filing made on paper in all cases where the agency has authorized or agreed to the electronic filing and the filing is made in accordance with applicable rules or agreement.

3.4. Subject to prior notice by the receiving agency, submission of an electronic record containing an electronic signature ~~record~~ or electronic postmark constitutes an agreement by the sender to accept equivalent electronic signature types on return or corresponding electronic records.

**§153-30-4. Agency Procedures for Adoption, Modification or Revocation of Electronic Signature Acceptance.**

4.1. Each agency shall evaluate the types of records received to determine which records can be accepted with electronic signatures, and which form type of electronic signature meets the security requirements of the specific transaction.

~~4.1.a. An electronic record, which requires the signature of a person under oath before an authorized official or with the acknowledgment of a notary public, may not be accepted with an electronic signature.~~

~~4.1.b. An electronic record, which requires the signature of a person under a self-executing oath, may be accepted with a digital signature or other electronic signature, which is encrypted, capable of verifying the identity of the signer, and capable of discerning any alteration of the message since transformation.~~

~~4.2. An agency may accept an electronic record containing an electronic signature only after complying with the procedural requirements of this rule.~~

~~4.3.~~ 4.2. For each type of electronic record on which an agency is willing to accept an electronic signature in satisfaction of a legal signature requirement or an electronic postmark in satisfaction of a filing or receipt requirement, the agency shall ~~publish a give notice through the Secretary of State in conjunction with the electronic filing system~~ which shall specify:

~~4.3.a. The name of the agency authorizing use of the electronic record;~~

~~4.3.b. A description of the type of electronic record;~~

~~4.3.c.~~ 4.2.a. The type or types of electronic signature or postmark that will be accepted on the record;

~~4.3.d.~~ 4.2.b. A description of any restrictions on whom may electronically sign the record;

~~4.3.e. The date that the electronic record with an electronic signature will first be accepted;~~

~~4.3.f.~~ 4.2.c. Specifications for any procedures or technology that must be used to create,

communicate, or store the electronic signature; and

~~4.3.g. 4.2.d.~~ The name of one or more contacts within the agency who can provide additional information, along with the address, telephone and/or e-mail address of the contact person.

~~4.4.~~ An agency subject to the Administrative Procedures Act, W. Va. Code Chapter §29A-1-1 et seq., shall comply with the notice requirements of subsection 4.3 of this section prior to acceptance of electronic signatures on electronic records, as follows:

~~4.4.a.~~ When an agency intends to accept electronic signatures on electronic records sent to or received from employees within the agency or within the department of which the agency is a subdivision, the authorized officer shall give notice as required by subsection 4.3 of this section to the appropriate personnel;

~~4.4.b.~~ When an agency intends to accept electronic signatures on electronic records sent to or received from other agencies outside the receiving agency's department, the agency shall give notice to the Secretary of State as required by subsection 4.3 of this section, at least thirty (30) days before first acceptance. The Secretary of State shall maintain a database of the agencies and the specific information provided for each type of record;

~~4.4.c.~~ When an agency intends to use or accept electronic signatures on electronic records received from a person acting on his or her own behalf, or from a person acting on behalf of an entity not subject to the Administrative Procedures Act, or private concerns, the agency shall give notice as required by subsection 4.3 of this section, at least thirty (30) days prior to first acceptance, by publication in the State Register; and

~~4.4.d.~~ The agency shall make available a summary of procedural information to assist persons desiring to file electronically and utilize electronic signatures:

~~4.5.~~ An agency not subject to the Administrative Procedures Act, including county and municipal agencies, shall comply with the notice requirements of subsection 4.3 of this section prior to its use or acceptance of electronic signatures on electronic records as follows:

~~4.5.a.~~ When an agency intends to use or accept electronic signatures on electronic records received from employees within the agency or within the governmental entity of which the agency is a subdivision, the authorized officer shall give notice as required by subsection 4.3 of this section to the appropriate personnel; and

~~4.5.b.~~ When an agency intends to use or accept electronic signatures on electronic records received from a person acting on his or her own behalf, or from a person acting on behalf of an entity other than the governmental entity of which the agency is a subdivision, or private concerns, the agency shall give notice as required by subsection 4.3 of this section, at least thirty (30) days prior to first acceptance, by publication as a Class I legal advertisement in a qualified newspaper published in the municipality or county where the principal office of the agency is located:

~~4.6.~~ 4.3. An agency may modify, suspend, or terminate the acceptance of the electronic signatures or electronic postmarks after giving notice according to the requirements of this section; provided, that

~~4.6.a.~~ 4.3.a. Notice shall be given as required at least ~~one hundred twenty (120)~~ thirty (30) days prior to the termination of acceptance of a type of electronic signature or electronic postmark; and

~~4.6.b.~~ 4.3.b. In an emergency which prevents the acceptance of the electronic signature or electronic

postmark, an agency may suspend acceptance of electronic signatures or electronic postmarks and require filings and signatures be provided on paper. The agency shall provide reasonable notice to potential filers.

4.7. Nothing in this rule shall be construed to require an agency to accept electronic signatures in lieu of written signatures.

4.8. Nothing in this rule shall be construed to allow an agency, without the specific authority of statute, to require a person acting on his or her own behalf, or a person acting on behalf of an entity other than a governmental entity to use an electronic signature in order to complete an essential filing.

4.9. All agencies may enter into agreements with other agencies relating to the use and acceptance of electronic signatures on electronic records communicated between those agencies.

#### **§153-30-5. Requirements for Acceptance of Digital Marks.**

5.1. An agency which intends to accept digital marks not associated with a certificate shall establish, ~~at a minimum~~; the security measures and procedural requirements ~~as provided in this section~~ the agency deems necessary to meet the requirements of law.

5.2. The agency ~~shall~~ may establish a secure registry of persons authorized to sign filings and records, ~~or shall~~ may utilize a secure registry for verification of the identity of the signer, or may accept the mark of an individual possessing the authorization code issued to the entity making the filing.

~~5.2.a.~~ 5.3. A person who ~~desires to become authorized to~~ makes a filing with the agency using a digital mark agrees that the use of the mark represents his or her affirmation of the filing and the contents of the filing. ~~shall file with the secure registry a signed statement verifying that he or she:~~

~~5.2.a.1.~~ Will not share with any other person the password, code or other security key required for use of the mark;

~~5.2.a.2.~~ agrees that the use of the mark represents confirmation of a record;

~~5.2.a.3.~~ Agrees to notify the agency immediately once he or she becomes aware that the security key is compromised; and

~~5.2.a.4.~~ Understands that the provisions of W. Va. Code §61-3C-10 prescribes the penalties for the unauthorized disclosure of a password, identifying code, personal identification number or other confidential security information.

~~5.2.b.~~ The agency or secure registry shall issue an authorized person an identifying number and shall enter that number, name and date of authorization into the registry

~~5.2.c.~~ The appropriate administrator shall revoke the access privileges of the authorized person upon termination of authority.

~~5.3.~~ 5.4. Each authorized person shall use a unique number, password, token or other personal authorization, which shall be encrypted, and which shall indicate the approval of that person.

~~5.4.~~ 5.5. The size, frequency of required changes and other elements of the security code shall meet state or agency security policies, if any are in effect. If no policy has been adopted, the elements of the security code shall meet generally acceptable standards for password security.

**~~§153-30-6. Security Requirements for Acceptance of Digital Signature:~~**

~~6.1. The agency shall establish the necessary computer hardware and software security, consistent with current generally acceptable standards for secure transactions, to prevent alteration of the electronic filing and to assure protection of the security key, and shall document that those features and measures are in place.~~

~~6.1.a. Information resources shall be protected by use of access control systems. Access control systems can be either internal (passwords, encryption, access control lists, constrained user interfaces) or external (port protection devices, firewalls, host-based authentication).~~

~~6.1.b. Rules for access to resources (including internal and external telecommunications and networks) shall be established by the information/application owner or manager who is responsible for the resources.~~

~~6.1.c. When confidential or sensitive information from one agency is received by another agency in connection with the transaction of official business, the receiving agency shall maintain the confidentiality or sensitivity of the information in accordance with the conditions imposed by the providing agency.~~

~~6.1.d. Pursuant to state security policy, information security and audit controls shall be incorporated into new systems.~~

~~6.1.e. Online banner screens, if used, shall contain statements to the effect that unauthorized use of the system is prohibited, and that violators are subject to criminal prosecution.~~

~~6.2. For filings involving financial transmissions or financial liability, an agency may establish dollar limitations on the amount of a transaction for which a digital signature and digital mark will be accepted.~~

**~~§153-30-7. §153-30-6. Requirements for Acceptance of Digital Signatures.~~**

~~7.1: 6.1. The Secretary of State, pursuant to legislative rule as required by W. Va. Code §39A-3-3, shall establish authorize a certification state certificate authority for the registration and issuance of certificates to subscribers for the use of digital signatures, as provided in this rule.~~

~~7.2: 6.2. An agency which agrees to accept a digital signature in connection with an electronic filing, shall obtain, install and test the essential hardware and software prior to giving notice of the intent to accept digital signatures.~~

~~7.3: 6.3. Any authorized officer or other authorized person who becomes a subscriber to the certification certificate authority maintained authorized by the Secretary of State and who maintains an authorized key pair shall be permitted to use a digital signature on any electronic document which the an agency agrees to accept.~~

**~~§153-30-8. Requirements for Acceptance of Other Forms of Electronic Signatures~~**

~~8.1. When an agency desires to accept a newly developed form of electronic signature not specifically listed in the definition of electronic signature contained in this rule, the agency shall apply to the Secretary of State for authority to accept the electronic signature.~~

~~8.2. To be acceptable as an electronic signature, the technology shall:~~

~~8.2.a. Allow the receiving agency to verify the identity of the sender, and~~

~~8.2.b. Allow the receiving agency to determine whether the message received has been altered en route.~~

~~8.3. The agency is responsible for assuring the security of the record following its acceptance.~~

**§153-30-7. Selection of Existing Federal Certificate Authority Program as State Authority and Repository; Purchase of Certificates; Fees; Revocation of Authorization.**

7.1. The Secretary of State may designate and authorize as the official state certificate authority and repository an existing federal certificate authority and repository program, providing:

7.1.a. The program permits the acquisition and use of electronic signature certificates by state and local government agencies for their employees and by individuals for transactions with those agencies at the rate established for the federal program;

7.1.b. The program has published a certificate policy or certificate practice statement that establishes comprehensive requirements for the security of all aspects of the system, including the physical and technical security of the software and hardware and the security requirements for authorized personnel.

7.1.c. The program uses a comprehensive requirements evaluation process for selection of qualifying certificate authorities.

7.1.d. The program authorizes one or more entities or vendors to provide the services of certificate authority, repository and registration authority;

7.1.e. Each authorized certificate authority manages the application, issuance and revocation of a certificate that complies with the certificate policy of the program.

7.1.f. Each authorized certificate authority offers subscriptions for certificates through the federal program that meet, at a minimum, the requirements of Level 2 assurance.

7.1.g. The program requires the bonding and audit of each authorized certificate authority.

7.2. Designation and authorization of the federal certificate authority and repository program as the state certificate authority shall substitute the requirements of the federal certificate authority and repository program for the requirements of the state certificate authority, repository and other requirements stated in sections nine through twenty-one of this rule. The certificate policy or certificate practice statement of the federal program shall control the form, application, issuance, expiration, suspension, and revocation of certificates and shall control the record keeping, record retention and audit requirements of the certificate authority and repository.

7.3. The Secretary of State may initiate a procurement process to establish a statewide contract with any or all of the certificate authorities authorized under the federal certificate authority and repository program, and only those authorized entities may be qualified to bid.

7.3.a. The contract may establish the purchase price of one or more types of electronic signature certificates for a subscription of a specified term, and that price shall be inclusive of the services performed as the registration authority, certificate authority and repository for the term of the subscription.

7.3.b. The contract may include pricing for individual certificates and for business certificates if offered by the authorized certificate authorities.

7.3.c. The contract may include pricing for single certificates and bundles of certificates at preferred rates.

7.3.d. The contract shall allow an agency to purchase certificates for use by agency employees and agency customers at an established contract rate; and an agency may require payment or reimbursement for certificates issued to customers.

7.4. The Secretary of State may revoke the authorization of a program designated under this section if the program fails to continue operation or fails to meet the requirements of the state.

7.4.a. The Secretary of State shall publish a notice in the State Register of the intent to revoke the authority of the program to act as state certificate authority and repository at least ninety days before the revocation takes effect.

7.4.b. Upon revocation of the designation of a state certificate authority and repository, an agency that accepts electronic signatures issued by that entity may determine whether to continue to accept those electronic signatures or establish a date after which those signatures will no longer be accepted, and shall give notice in conjunction with the electronic filing information of the agency's intent.

#### **§153-30-8. Authorization of Electronic Postmark**

8.1. An agency may accept an electronic postmark, as defined in subsection 2.6 of this rule, as evidence of compliance with a requirement for United States registered mail or certified mail, return receipt requested.

8.2. This section shall not be construed to require a person or state agency to use or permit the use of an electronic postmark.

#### **§153-30-9. Selection of State Authority; Eligibility Requirements for Registration and Certificate Management and Authority.**

9.1. The Secretary of State ~~shall~~ may initiate a procurement process to obtain the services of one or more private vendors, at the discretion of the state, to provide services and systems to enable the Secretary of State to manage and authorize the issuance of ~~digital electronic signature and digital mark~~ certificates.

9.2. The Secretary of State ~~shall~~ may initiate a procurement process to obtain the software and systems to ~~serve~~ as the state repository or to obtain the services of one or more private vendors, at the discretion of the Secretary of State, to serve as a state repository.

9.3. The Secretary of State may contract with a vendor for services of a state ~~certification certificate~~ authority and a state repository.

9.4. The state ~~certification certificate~~ authority may issue a certificate that binds a public key to any authorized person for the purpose of verifying a digital signature created by that person on an electronic record in his or her capacity as an agent of the state or any agency in West Virginia, ~~as defined by subsection 2.1. of this rule.~~

9.5. The state certificate ~~management~~ authority may issue a certificate to any person for the purpose of verifying a digital signature created by that person on an electronic record filed with any agency, ~~as defined by subsection 2.1. of this rule.~~

9.6. For the duration of the contract, the state ~~certification certificate~~ authority and state repository shall

comply with the provisions of this rule.

9.7. To be qualified for selection as a state ~~certification~~ certificate authority and state repository, a vendor shall:

9.7.a. Maintain a system of internal security controls to restrict access to systems and data only to authorized personnel, and conduct appropriate clearances of those personnel to ensure that they have demonstrated knowledge and proficiency in following the requirements of this rule, and have never been convicted of a felony or of any other crime involving fraud or misrepresentation;

9.7.b. File with the secretary of state a corporate surety bond or letter of credit for a term of at least five years, in the amount of fifty thousand dollars (\$50,000);

9.7.c. Use a trustworthy system, including a secure means for limiting access to its private key;

9.7.d. Be licensed to do business in the state and registered as a vendor for the state;

9.7.e. Provide the Secretary of State with a copy of an unqualified performance audit performed in accordance with standards set in the American Institute of Certified Public Accountants (AICPA) Statement on Auditing Standards No. 70 (S.A.S. 70) "Reports on the Processing of Service Transactions by Service Organizations" (1992) to ensure that the certification authority's practices and policies are consistent with the certification authority's stated control objectives. The audit shall include a SAS 70 Type Two audit -- A Report of Policies and Procedures Placed in Operation and Test of Operating Effectiveness-- receiving an unqualified opinion; and

9.7.f. Meet any other requirements specified in the request for proposal and contract.

**§153-30-10. Requirements for State Certificate ~~Management~~ Authority Practice.**

10.1. The state ~~certification~~ certificate authority shall provide the Secretary of State at least annually, or upon any significant change in procedures, a ~~certification~~ certificate practice statement detailing the security and procedural steps utilized in the issuance, management, suspension, and revocation of certificates and authentication of the identity of persons named in certificates.

10.2. The Secretary of State shall publish electronically the ~~certification~~ certificate practice statement within thirty (30) days after it is filed.

10.3. The state ~~certification~~ certificate authority shall use only a trustworthy system to:

10.3.a. Issue, suspend, or revoke a certificate;

10.3.b. Publish or give notice of the issuance, suspension, or revocation of a certificate; or

10.3.c. Create and protect private keys.

10.4. Upon a written, signed and reasonably specific inquiry from an identified person, the state ~~certification~~ certificate authority shall disclose any fact material to the reliability of a certificate that it has issued. The certification authority may require payment of reasonable compensation before making this disclosure.

**§153-30-11. Requirements for State Repository Practice.**

11.1. The state repository shall provide the Secretary of State at least annually, or upon any significant change in procedures, a practice statement detailing the operation of the repository, the conduct of its repository services, the processes for publishing certificates and notices of revocation into the repository, the processes for obtaining copies of certificates and checking certificate status, and all security and procedural steps related to the certificates.

11.2. The Secretary of State shall publish electronically the practice statement within thirty (30) days after it is filed.

11.3. The state repository shall provide all repository services by means of a trustworthy system.

11.4. Upon a written, signed and reasonably specific inquiry from an identified person, the state repository shall disclose any fact material to the reliability of a specific verification transaction. The state repository may require payment of reasonable compensation before making this disclosure.

11.5. The state repository shall provide an online database containing at least:

11.5.a. All valid certificates published into the database by state certification authorities; and

11.5.b. All notices of revocation of the certificates published into the directory by state certification authorities.

11.6. The state repository shall enable state certification authorities to add information, including certificates and notices of certificate revocation, to the database in a prompt, reasonable, and secure manner.

11.7. The state repository shall store certificates issued by state certification authorities that are no longer valid and provide copies of them on request. The state repository shall also store other information regarding certificates, notices of revocation, certification practice statements, and other matters relating to the services provided by state certification authorities, and shall make copies of the information available on request.

11.8. The state repository shall provide any additional information and services specified in its contract with the state.

11.9. The state repository shall make the required Repository Services available via the protocols and methods specified by the state or mutually agreed to by the state and the state repository.

11.10. The state repository shall be available for use online at least ninety-five percent (95%) of the time during business hours. When down time is planned, the state repository shall give reasonable notice before the down time.

11.11. On receipt of a message from a state ~~certification~~ certificate authority requesting publication of a certificate or notice of revocation of a certificate, the state repository shall promptly place the certificate or notice of revocation online in the repository within twenty-four (24) hours from the time of receipt of the request, if the message is demonstrably authentic, in the required form, and otherwise complies with the applicable specifications for publication into the repository.

11.12. The repository that the state repository provides for the state shall be operationally distinct and separate from any other repository and directory system that the state repository operates.

**§153-30-12. Requirements for Issuance of Certificates.**

12.1. The state ~~certification~~ certificate authority may issue a certificate to a subscriber only after all of the following conditions are satisfied:

12.1.a. The certification authority has received a request for issuance signed by the prospective subscriber, and if the subscriber is acting in an official capacity, signed by the appropriate officer; and

12.1.b. The certification authority has received sufficient evidence to reasonably determine that:

12.1.b.1. The prospective subscriber is the person to be listed in the certificate to be issued;

12.1.b.2. The information in the certificate to be issued is accurate;

12.1.b.3. The prospective subscriber rightfully holds the private key corresponding to the public key to be listed in the certificate; and

12.1.c. The certification authority has confirmed that:

12.1.c.1. The public key to be listed in the certificate can be used to verify a digital signature affixed by the private key held by the prospective subscriber; and

12.1.c.2. The certificate provides information sufficient to locate or identify the repository in which notification of the revocation or suspension of the certificate will be listed if the certificate is suspended or revoked.

12.2. The state ~~certification~~ certificate authority may issue a separate certificate to a subscriber as the agent for another officer or authorized person.

12.2.a. The certificate may be issued only upon evidence that:

12.2.a.1. The officer or other authorized person has the authority to designate the prospective subscriber as an agent to act on his or her behalf;

12.2.a.2. The officer or other authorized person files with the state ~~certification~~ certificate authority a statement appointing the prospective subscriber as agent, designating any limitations on his or her authority to act in the official capacity of the officer or appointing person, and requesting issuance of the certificate listing the corresponding public key; and

12.2.a.3. The subscriber agrees in writing to use the certificate only when acting as agent for the officer or other authorized person.

12.2.b. The state ~~certification~~ certificate authority shall clearly identify the subscriber as the holder of the private key corresponding to the public key to be listed in the certificate for the specific purpose of acting on behalf of the officer or authorized person.

12.3. The requirements of subsection 11.1. of this rule may not be waived or disclaimed by either the certification authority, the subscriber, or both.

12.4. In obtaining information of the subscriber material to issuance of a certificate, the certification authority may require the subscriber to certify the accuracy of relevant information under oath or affirmation of truthfulness and under penalty of perjury.

12.5. If the subscriber accepts the issued certificate, the state ~~certification~~ certificate authority shall publish a signed copy of the certificate in the state repository.

12.6. If the subscriber does not accept the certificate, the state ~~certification~~ certificate authority may not publish it, or shall cancel its publication if the certificate has already been published.

**§153-30-13. Subscribers; Duties Upon Acceptance of Certificate.**

13.1. By accepting a certificate issued by the state ~~certification~~ certificate authority, the subscriber listed in the certificate certifies to all who reasonably rely on the information contained in the certificate during its operational period that:

13.1.a. The subscriber legally holds the private key corresponding to the public key listed in the certificate; and

13.1.b. All representations made by the subscriber to the state ~~certification~~ certificate authority and included in the information listed in the certificate are true.

13.2. By accepting a certificate, a subscriber recognizes that the provisions of W. Va. Code §61-3C-10 prescribe the penalties for the unauthorized disclosure of confidential security information, including the private key.

13.3. A subscriber to whom a certificate is issued in his or her capacity to act on behalf of an agency shall request the revocation of the certificate immediately upon separation from the agency.

13.4. An agency employing a person to whom a certificate is issued to act on behalf of that agency may request the revocation of the certificate upon separation of the employee or disqualification of the employee to act.

**§153-30-14. Suspension of Certificate.**

14.1. The state ~~certification~~ certificate authority issuing a certificate shall suspend the certificate for a period not to exceed ninety-six hours:

14.1.a. Upon request by a person whom the certification authority reasonably believes to be:

14.1.a.1. The subscriber named in the certificate, or the officer or other authorized person who originally appointed the subscriber to act as agent;

14.1.a.2. a person duly authorized to act for that subscriber;

14.1.a.3. a person acting on behalf of the unavailable subscriber; or

14.1.b. By order of the Secretary of State.

14.2. The certification authority shall require the name, address, and telephone number, of the person requesting suspension, and other evidence of his or her identity.

14.3. Immediately upon suspension of a certificate by the state ~~certification~~ certificate authority, the authority shall give notice of the suspension to the state repository.

14.4. The state ~~certification~~ certificate authority may remove the suspension upon reasonable determination that the suspension was not warranted.

**§153-30-15. Revocation of Certificate.**

15.1. The state ~~certification~~ certificate authority shall revoke a certificate it has issued within twenty-four hours after receiving:

15.1.a. Confirmation that it was not issued as required by this rule;

15.1.b. A written request for revocation by the subscriber of that certificate or the officer or authorized person originally appointing the subscriber as agent, subject to confirmation of the identity and authority of the person making the request; or

15.1.c. A certified copy of the subscriber's death certificate, or upon confirming the subscriber's death by other evidence.

15.2. The certification authority shall revoke a certificate it has issued upon presentation of documents effecting a dissolution, termination or revocation of the subscriber, or upon other reliable evidence that the subscriber has ceased to exist.

15.3. The certification authority may revoke a certificate that it issued upon evidence that the certificate has become unreliable, regardless of whether the subscriber consents to the revocation.

15.4. Immediately upon revocation of a certificate by the certification authority, the authority shall give notice of the revocation and shall publish the notice in the state repository.

**§153-30-16. Expiration of Certificate.**

16.1. The term of the certificate is subject to the contract with the state ~~certification~~ certificate authority.

16.2. The certificate is valid for the duration of the term, unless sooner revoked, beginning on the date of issuance.

16.3. A certificate shall indicate the date on which it was issued and on which it expires.

16.4. Upon expiration of a certificate, the certification authority is discharged of its duties with respect to that certificate, except those duties related to the retention of records relating to the certificate.

**§153-30-17. Form of Certificates.**

17.1. Certificates issued by the state ~~certification~~ certificate authority shall follow the Basic Certificate Field Standards specified in standard ITV-TX.509, Ver. 3, in accordance with certificate profiles issued by the state.

17.2. If certificate extension fields are used, their use shall conform to the required guidelines referenced in X.509 Section 12, and may be displayed on the certificate.

**§153-30-18. Record keeping and Retention.**

18.1. The state ~~certification~~ certificate authority shall maintain a data file containing the record of each

subscriber, including at least:

18.1.a. The name, address, and social security number or other national identification number of the subscriber, and the name of the agency, if the subscriber holds the digital signature certificate as an agency representative;

18.1.b. The name, address, and title of the officer or authorized person on whose behalf the subscriber will act, if the certificate is issued to the subscriber as an agent; and

18.1.c. The date of the issuance and the expiration of the certificate, and certificate number.

18.2. The state repository shall maintain a data file containing every time-stamp issued by the certification authority, with sufficient information to identify the subscriber and the document.

18.3. The state ~~certification~~ certificate authority shall maintain the records necessary to assure compliance with the provisions of W. Va Code §39A-3-3 and this rule, as they pertain to digital signatures and the certificate authority.

18.4. Except for the names and address of subscribers, and the dates of issuance and expiration of their respective certificates, the records of the state ~~certification~~ certificate authority pertaining to subscribers are not subject to public inspection. All records shall be indexed, stored, preserved and reproduced so as to be accurate, complete and accessible to an auditor.

**§153-30-19. Compliance Audit.**

19.1. The state ~~certification~~ certificate authority may be subject to an annual compliance audit conducted by a reliable certified public accountant in conjunction with a reliable authority on computer security. The audit shall include a SAS 70 Type Two audit as specified in subdivision 3.7.5 of this rule.

19.2. Following an audit, the Secretary of State may require reports as needed to assure problems identified in the audit are corrected.

**§153-30-20. Procedure on Discontinuance of Business of State ~~Certification~~ Certificate Authority or State Repository.**

20.1. If a state ~~certification~~ certificate authority or state repository goes out of business or otherwise discontinues providing the services specified in the contract prior to expiration of the contract, the certification authority or repository shall:

20.1.a. Notify the Secretary of State at least one hundred twenty days (120) before discontinuing services;

20.1.b. Notify all subscribers listed in valid certificates issued by the certification authority at least thirty days before discontinuing services;

20.1.c. Minimize disruption to the subscribers of valid certificates and relying parties;

20.1.d. Refund, on a pro rata basis, fees paid in advance by subscribers for any certificate period in excess of one month from the date of discontinuation; and

20.1.e. Make reasonable arrangements for the preservation of the state ~~certification~~ certificate

authority's records.

20.2. The party issuing the corporate surety bond or letter of credit filed with the application shall continue the bond or letter of credit in effect until the expiration of the term specified in the bond or letter of credit.

20.3. The Secretary of State may specify a process by which he or she may, in any combination, receive, administer, or disburse the records of a state ~~certification~~ certificate authority or state repository that discontinues providing services, for the purpose of maintaining access to the records and revoking any previously issued valid certificates in a manner that minimizes disruption to subscribers and relying parties.

20.4. The state may recover the costs of the state incurred in conjunction with the early termination of the contract and the process of obtaining alternative services.

**§153-30-21. Fees for Issuance of Certificates.**

21.1. ~~The A~~ state ~~certification~~ certificate authority selected under section nine of this rule may charge the fee for issuance of a certificate which is set by the terms of the state contract in effect at the time of the application by the subscriber.

21.2. A certificate authority authorized under section seven of this rule may charge the fee for issuance of a certificate which is in effect at the time of the application by the subscriber.

21.2. The fee for a certificate shall be paid by the subscriber, or in the case of an agency employee, by the agency on whose behalf the subscriber will use the digital signature certificate.