

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #2

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JUN 30 4 26 PM '98

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: SECRETARY OF STATE TITLE NUMBER: 153

RULE TYPE: LEGISLATIVE; CITE AUTHORITY W.VA. CODE §39-5-4

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 30

TITLE OF RULE BEING PROPOSED: USE OF ELECTRONIC SIGNATURES

BY STATE AGENCIES

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON JULY 31, 1998 AT 12:00 P.M. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

MARY RATLIFF

SECRETARY OF STATE

BLDG. 1, ROOM 157-K

CHARLESTON, WV 25305

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

Ken Hechler

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

\$3.20

Statement of Purpose

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 establishes procedures, notice and security requirements for agencies desiring to accept various types of electronic signatures. It also provides for the method for selection of a uniform digitized signature application to prevent the acquisition of incompatible software by different agencies.

Statement of Circumstances

Efficient governmental action is essential to a strong economy and effective service to citizens. Electronic signatures, with proper security controls, can allow for electronic commerce, speed interactions between agencies, reduce expensive paper transfers of information, and improve service to citizens. Procedures for agencies to identify appropriate transactions for electronic filing, give notice to citizens, and implement the necessary security controls will allow this technology to be implemented effectively.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: USE OF ELECTRONIC SIGNATURES BY STATE AGENCIES
 Type of Rule: X Legislative Interpretive Procedural
 Agency SECRETARY OF STATE/AUDITOR
 Address BLDG. 1, ROOM 157-K
CHARLESTON, WV 25305

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	HEREAFTER
ESTIMATED TOTAL COST	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERATIONS					
EQUIPMENT					
OTHER					

2. Explanation of above estimates:

The use of electronic signatures is anticipated to result in savings at least as great as any costs of programming of software and should not result in overall budgetary changes.

3. Objectives of these rules:

Objectives include: elimination of paper generating processes, reduction of time and processing expense, and maintenance of high security fo transactions

Rule Title: USE OF ELECTRONIC SIGNATURES BY STATE AGENCIES

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

Long term savings from increased efficiency.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

Beneficial economic impact resulting from enhanced business climate.

C. Economic Impact on Citizens/Public at Large.

Date: June 30, 1998

Signature of Agency Head or Authorized Representative

Ken Hecker

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TITLE 153
LEGISLATIVE RULES
JOINT RULE OF THE SECRETARY OF STATE AND STATE AUDITOR

JUL 30 4 27 PM '98

SERIES 30
Use of Electronic Signatures by State Agencies

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§153-30-1. General.

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

1.2. Authority. -- W. Va. Code §§ 39-5-4.

1.3. Filing Date. --

1.4. Effective Date. --

§153-30-2. Definitions

2.1. "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.

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

2.3. "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:

2.3.a. A "digitized signature" which consists 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;

2.3.b. A "digital mark" which consists of an electronic code indicating approval or confirmation which is entered into a protected digital record following access protocols which identify the user and require a password, personal identification number, encrypted card or other security device which restricts access to one or more authorized individuals; and

2.3.c. A "digital signature" which consists of a message transformed using an asymmetric crypto system so that a person having the initial message and the signer's public key can accurately determine whether the message was created using the corresponding private key, and whether the message has been altered.

2.4. "Electronic filing" means 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 filing for purposes of this rule.

2.5. "Accept an electronic signature" means to accept a filing which requires the signature of an authorized person when that

filing contains an electronic signature in lieu of an original signature.

§153-30-3. Agency Procedures for Adoption, Modification or Revocation of Electronic Signature Acceptance

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

3.1.a. A filing 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 prior to the authorization in law of an electronic attestation.

3.1.b. A filing which requires the signature of a person under a self-executing oath may be accepted with an electronic signature only if a digital signature is used.

3.2. An agency may accept a filing containing a digital signature, digital mark, digitized signature or other electronic signature only after complying with the procedural requirements of this rule.

3.3. An agency subject to the Administrative Procedures Act, West Virginia Code Chapter 29A-1-1 et seq., shall comply with the following notice requirements prior to acceptance of electronic signatures.

3.3.a. When an agency intends to accept electronic signatures on electronic filings received from employees within the agency or within the department of which the agency is a subdivision, the authorized officer shall give notice to the appropriate personnel

of the types of filings and the procedures which will be required.

3.3.b. When an agency intends to accept electronic signatures on electronic filings received from other agencies outside the receiving agency's department, the agency shall give notice in writing of its intent, at least thirty (30) days before first acceptance, to the Information Services and Communications Division of the Department of Administration (IS&C). The IS&C shall maintain a database of the agencies and the specific information provided for each type of filing.

3.3.c. When an agency intends to accept electronic signatures on electronic filings 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, the agency shall give notice of its intent, at least thirty (30) days prior to first acceptance, by publication in the State Register.

3.3.d. In the notice required in subdivisions 3.3.b. and 3.3.c., the agency shall give the name of the agency receiving the filing, a description of the type of filing, the type or types of electronic signature which will be accepted, a description of any restrictions on who may file, the date that a filing with an electronic signature will first be accepted, and the name of one or more contacts who can provide additional information, along with the address, telephone and/or e-mail address of the contact person.

3.3.e. The agency shall make available a summary of technical or procedural information to assist persons desiring to file electronically and utilize electronic signatures.

3.4. An agency not subject to the Administrative Procedures Act, including county and municipal agencies, shall comply with the following notice requirements prior to acceptance of electronic signatures.

3.4.a. When an agency intends to accept electronic signatures on electronic filings received from employees within the agency or within the governmental entity of which the agency is a subdivision, the authorized officer shall give notice to the appropriate personnel of the types of filings and the procedures which will be required.

3.4.b. When an agency intends to accept electronic signatures on electronic filings 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, the agency shall give notice of its intent, 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.

3.4.c. In the notice, the agency shall give the same information as required in section 3.3.d.

3.5. An agency may modify or terminate the acceptance of the electronic signatures following the same procedures as required in this section for adoption, provided, that:

3.5.a. Notice must be given as required at least one hundred twenty (120) days prior to the termination of acceptance of a type of electronic signature; and

3.5.b. In an emergency caused by the failure of the computer hardware, software, or communication systems required for the

acceptance of the electronic signature, an agency may require filings and signatures be provided on paper.

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

3.7. 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 the governmental entity to use a digital signature in order to complete an essential filing.

3.8. All agencies shall have authority to enter into agreements relating to the use and acceptance of electronic signatures on electronic messages or filings between those agencies.

§153-30-4. Requirements for Acceptance of Digital Marks

4.1. An agency which intends to accept digital marks shall establish, at a minimum, the security measures and procedural requirements as provided in this section.

4.2. The agency shall establish a secure registry of persons authorized to sign filings and records, or shall utilize a secure registry for verification of the identity of the signer.

4.2.a. When an agency maintains its own registry, a person who desires to become authorized to file with the agency using a digital mark shall file a signed statement verifying that he or she:

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

4.2.a.2. Agrees that the use of the mark represents approval and agreement to the contents of a filing; and

4.2.a.3. Agrees to notify the agency immediately if he or she becomes aware that the security key is compromised.

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

4.2.b. An authorized person shall be issued an identifying number which shall be entered into the registry, along with the date of authorization.

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

4.3. Each authorized person shall utilize a unique number, password or other personal authorization which shall be encrypted and which shall indicate the approval of the person.

4.4. 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.

4.5. 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 those features and measures in place.

4.5.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).

4.5.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.

4.5.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.

4.5.d. Information security and audit controls shall be incorporated into new systems.

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

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

§153-30-5. Requirements for Acceptance of Digitized Signatures.

5.1. In order to assure the ease of use of digitized signatures between agencies, and between other persons and agencies, the state shall adopt a uniform system for digitized signature acceptance using a single software provider.

5.2. The Information Services & Communications Division of the Department of Administration shall initiate a procurement process to identify and obtain the appropriate software.

5.3. The agency shall establish security procedures as provided in subsection 4.5. of this rule.

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

6.1. The Secretary of State, pursuant to legislative rule as required by West Virginia Code §39-5-4, shall establish a certification authority for the registration and issuance of certificates to subscribers for the use of digital signatures.

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

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

§153-30-7. Requirements for Acceptance of Other Forms of Electronic Signature.

7.1. 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 Chief Technology Officer for authority to accept the electronic signature.

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

7.2.1. Allow the receiving agency to determine the identity of the sender.

7.2.2. Allow the receiving agency to determine whether the message received has been altered en route or is incomplete.

7.2.3. Ensure that the sender cannot falsely deny sending the message nor falsely deny its content.

7.3. The agency shall be responsible for assuring the security of the filing following its acceptance.