

**California Secretary of State  
FINAL STATEMENT OF REASONS  
April 30, 2018**

**FINAL STATEMENT OF REASONS**

The information contained in the Initial Statement of Reasons (ISOR) at the time of Public Notice remains unchanged.

**UPDATED INFORMATIVE DIGEST**

The Secretary of State conducted the initial 45-day comment period, which closed on April 30, 2018. A public hearing was held on April 27, 2018. No comments were received at the public hearing.

One written comment was received, however, it did not necessitate changes to the regulations as proposed.

There have been no changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Regulatory Action.

**SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE PUBLIC COMMENT PERIOD FROM MARCH 16, 2018 to APRIL 30, 2018.**

The originally proposed regulations were made available for public comment for at least 45 days from March 16, 2018 to April 30, 2018. A public hearing was requested on April 13, 2018, and the public hearing was subsequently scheduled, noticed, and held. No comments were received at the public hearing. One written comment was received from Matthew Marzucco ("Commenter").

COMMENT NO. 1.1: Commenter states that "implied assertions contained in the assessments would have voters believe that this regulation will result in a new gold rush to start business within the state. The facts simply do not support these claims". Commenter follows up his statement with a list of "facts" allegedly in support of his comment.

Response: The Secretary of State (SOS) disagrees with this comment. The ISOR and other supporting documents neither explicitly nor implicitly suggest a "gold rush" of business will occur as a result of the regulations. Instead, the ISOR and supporting documents predict a general, net increase in business over a period of time. In fact, the ISOR (on Page 5) specifically states the SOS believes that, to the contrary of an implied "gold rush", "...over time, the regulations will have a net positive effect on the creation of businesses in California." Furthermore, Commenter's relied-upon "facts" are not factual by definition, but instead represent his apparent predictions and/or projections. Nonetheless, the SOS will treat each "fact" as an additional comment under Comment 1.1. Each is addressed below:

- “Fact” 1: Commenter asserts that the regulations will cost the State \$15,000,000 annually in revenue due to a loss of special processing fees.

Response: Although no empirical data is cited, for the calculation in this "fact" to be accurate, the SOS would need to receive *one million fewer* annual counter filings (each counter filing is accompanied by a \$15 special processing fee, whereas, there is no processing fee for the proposed online filing mechanism). Additionally, going beyond the statistical issue, gross revenue alone does not reflect an adequate analysis of cost or benefit to the State. Online submissions will save associated SOS resources and costs for intake, manual data entry for tracking and manual processing of both mail and counter submissions, costs associated with manual processing (manual data entry for tracking, physical movement of paper filings through review and filing process, scanning and indexing of filed documents) as well as costs from manual return or mailing of filed documents to the customer.

No change to the regulations is warranted by this comment.

- “Fact” 2: Commenter asserts that the regulations will result in an additional annual loss to the State “in the millions” due to “filers no longer requiring expedited processing”.

Response: The SOS disagrees with Commenter’s assertion in “Fact” 2 because it presumes that the proposed regulations granting online filings priority over counter filings will eliminate customers’ need for expedited processing. The SOS believes that this is unlikely. Currently, the SOS is required by the legislature to maintain a five-day (or less) turnaround time on all counter and mail submissions for filing. Many customers still nonetheless choose to pay for the 24-hour (or quicker) turnaround that is offered by expedited processing. While the online submission mechanism that will be enabled under the regulations is indeed expected to yield faster overall turnaround times than counter or mail submissions, there is currently no expectation that the online turnaround time will rival expedited submissions, which will therefore continue to carry the current customer value.

Additionally, because most expedited filing service levels will now be available online (eliminating the need to appear in person to obtain this level of processing), the SOS actually expects an increase in the usage of the expedited processing service, which could result in a net increase in revenue, rather than a decrease, as suggested by Commenter.

No change to the regulations is warranted by this comment.

- “Fact” 3: Commenter asserts that the regulations will result in a loss of jobs in California for California-based filing companies. However, Commenter provides no data or analysis for his assertion.

Response: The SOS disagrees with Commenter’s assertion, especially in light of his lack of data or analysis supporting his assertion. Commenter’s apparently implied

argument is that by making filing documents with the SOS easier, filing companies will lose business. However, customers wanting to file documents with the SOS can *already* do so without involving filing companies. Customers can do so by either delivering their documents in person, or by mailing their documents to the SOS directly. Those customers who currently prefer to submit documents without the aid of a filing company will likely continue to prefer to submit their filings themselves, and the new regulations will provide a new way to do that. Other customers, despite already having simple ways to submit documents to the SOS on their own, nonetheless choose the convenience of using a filing company. The SOS expects that trend to continue to be true even once documents can be submitted for filing online. More importantly, the SOS believes that the proposed regulations will actually help reduce costs for filing companies since the filing companies themselves will be able to take advantage of the online submission method in conducting their business (lower costs in traveling to/from the SOS, faster turnaround times for their customers, etc.).

No change to the regulations is warranted by this comment.

- “Fact” 4: Commenter makes a comment about the number of businesses listed on the SOS website that assist with customer filings, and suggests the number is not accurate.

Response: This comment does not appear to be relevant to the proposed regulations and therefore will not be commented upon further.

- “Fact” 5: Commenter again states that the proposed regulations will result in a loss of jobs for workers employed by filing companies.

Response: The SOS disagrees with Commenter’s comments for the same reasons specified in the response to “Fact” 3.

- “Fact” 6: Commenter states that SOS will experience unanticipated costs due to chargebacks from credit card processors.

Response: The SOS already permits payments for certain document filings to be made by credit cards and chargebacks are a known/accounted-for issue. While additional chargebacks are certainly possible with a new submission method where the primary payment method is by credit card, the SOS does not believe any change to the regulations is necessary despite this concern.

- “Fact” 7: Commenter suggests that the proposed regulations “aids and abets criminal activity”.

Response: While Commenter’s comment may be well-intentioned, the issue he identifies is not an actual issue with the proposed regulations, but rather a global, known issue associated with any form of semi-anonymous business transaction. Furthermore, he does not account for the fact that “anyone with an internet connection and a credit card” might *legitimately* want to form a *legitimate* business. Certainly, where fraud or

other criminal activity can be prevented, the SOS will do what it is able to prevent it. The SOS also will continue to cooperate with law enforcement investigations of such criminal activities. However, contrary to Commenter's assertion, the proposed regulations do not create new avenues for criminal activity.

No change to the regulations is warranted by this comment.

**COMMENT NO. 1.2:** Commenter states that the system used by the SOS UCC division's ("XML technology") "solves each and every fundamental issue in [the] reasons document. Not only does it address the primary goals behind [the] regulation, it provides far more benefits."

Response: Commenter is mistaken about the technology he references. UCC filings are very different than most of the filings being addressed by the proposed regulations. For example, UCC filings are rarely rejected, do not require signatures, and do not go through any form of legal review. Because of these significant differences, the technology behind the UCC division's online filings is, by comparison, quite simple because it is not required to address numerous challenges that the technology behind the proposed regulations will.

Furthermore, the UCC Section has other differences that are relevant. For example, the UCC Section requires customers to create an account that must maintain a balance for purposes of submitting documents for filing. In contrast, the filings these regulations seek to address require a payment on submission, per document. There is no system in place for a customer to have a standing balance on an account to draw from.

In other words, the existing XML technology referenced by Commenter does not address the primary goals of the regulations, provides fewer benefits, and is therefore not a viable alternative.

No change to the regulations is warranted by this comment.

## **ALTERNATIVE DETERMINATIONS**

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons or would be more cost effective to affected private persons and equally effective in implementing and achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific by this rulemaking.

The alternative to these regulations is to maintain the status quo, which, while still effective, is less efficient, less customer friendly, and cannot offer the heightened level of security for sensitive customer information the proposed regulations will guarantee.

During the public comment period, (as discussed above in Comment No. 1.2) a public commenter suggested that the SOS already has the technology in place to accomplish the stated goals of the regulations without actually enacting new regulations. For the same

reasons as stated above in response to Comment No. 1.2, this is incorrect, and therefore, the suggested alternative is not reasonable or viable.

### **ECONOMIC IMPACT ON SMALL BUSINESS**

The Secretary of State is not aware of any economic impact on small business. While Commenter suggested that the regulations might impact small business filing companies in California, as discussed in Comment 1.1 above, the SOS does not agree with that suggestion since all types of current SOS customers (individuals, businesses, accountants, lawyers, service companies, couriers etc.) will continue to be able to use the online services for themselves and on behalf of their customers.

### **LOCAL MANDATE DETERMINATION**

The proposed regulations do not impose any mandate on local agencies or school districts.