

**California Secretary of State
Proposed Regulatory Action: Digital Signatures
Initial Statement of Reasons**

PUBLIC HEARING AND COMMENT

Hearing Date: No hearing date is scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the contact person listed no later than 15 days prior to the close of the written comment period.

Written Public Comment Period: November 13, 2020 through December 31, 2020

Subject Matter of Proposed Regulations: Digital Signatures

Section(s) Affected: Sections 22000, 22002, 22003, 22004, and 22005 of Title 2, Division 7, Chapter 10 of the California Code of Regulations

PURPOSE AND NECESSITY

The purpose of these regulations is to make permanent the emergency regulations the SOS adopted in April 2020 related to digital signatures. The emergency regulations removed the Approved List of Digital Signature Certification Authorities from existing regulations and from the SOS website. The emergency regulations replaced this list with the requirement that public entities shall only accept certificates from certificate authorities, as defined in current regulation, that are in good standing with one of three third-party certificate programs. The emergency regulations essentially shift the burden of members of the public identifying appropriate digital signature services to use to state entities in ensuring digital signatures were prepared consistent with these regulations.

Making permanent the emergency regulations is necessary to achieve the goals of those emergency regulations. The SOS adopted the regulations as an emergency so that the regulatory changes could be in effect quickly as the world adopted to COVID-19, but the underlying changes are important to keep beyond COVID-19. Making these emergency regulations permanent is necessary to clarify the use of digital signatures for interactions with state agencies and to reduce the chilling effect current regulations have on the use of digital signatures.

FACTUAL BASIS / RATIONALE

The factual basis and rationale for each section of the proposed regulations are as follows:

22000. Definitions.

Paragraph (a)(1) – The definition of “digitally signed communication” is standardized to remove a hyphen and modified to refer to “an acceptable technology” as defined in these regulations

rather than “a computer” as previously stated. The term “individual that signed the message” is clarified to mean “signer.” These changes are necessary to make this definition more clear and to contextualize it within these regulations.

Paragraph (a)(2) – The definition of “message” is modified to clarify the direction by which information travels: from a public entity or a private entity to a public entity. These changes are necessary to improve understanding of this term within the context of these regulations.

22002. Criteria for State to Determine if a Digital Signature Technology is Acceptable for Use by Public Entities.

Two non-substantive style changes are proposed to this section. These changes are necessary for conformity with the style of the remainder of this regulation chapter.

22003. List of Acceptable Technologies.

The title of this section is changed to “Acceptable Technologies” to reflect the modified scope of this section. This section no longer requires the Secretary of State to maintain a list of acceptable technologies and instead refers to industry standards. The change of the section title is necessary for conformity with the content of the section.

Capitalization throughout this paragraph is changed to conform to the style of these regulations, and to improve readability. All sections, paragraphs, and sub-paragraphs are now capitalized, even those that are a list. The word “section” is now un-capitalized and used in all cases in place of the section symbol. Lists are standardized to show a semicolon at the end of each list item and the word “and” after the second to the last list item. These changes are necessary for improved readability.

Section (a) – The reference to “Section 22003(a)1-5” is replaced with the word “following” to reference the list that falls under this section. This change is necessary for clarity of reading these regulations.

Section (a), Paragraph (1) – The definitions in sub-paragraphs (A) and (B) are removed as they refer to a list of certification authorities no longer required by these regulations. This change is necessary to eliminate unnecessary and confusing definitions that are no longer relevant. The remainder of the sub-paragraphs are renumbered to show accurate numbering.

Section (a), Paragraph (4) – The word “California” is added to the Evidence Code reference for clarity.

Section (a), Paragraph (6) – This paragraph is removed. This paragraph required the SOS to maintain an “Approved List of Certificate Authorities.” Only digital signatures made using one of those approved certificate authorities were considered acceptable for the purposes of digital signatures sent to state agencies under Government Code section 16.5. The original regulations presented this list as a method for the SOS to ensure the legitimacy of digital signatures used according to this statute. This paragraph described the nature of this list and requirements for

certificate authorities to stay on the list. Since these regulations have been in effect, the SOS has learned that this list is confusing for state agencies receiving digital signatures to understand, and also determined that this list was burdensome on the SOS and certificate authorities to maintain. Furthermore, the SOS determined that an acceptable alternative list exists that provides similar benefits as the SOS-maintained list. For this reason, the emergency regulations that we are seeking to make permanent remove this SOS list and create a new requirement for certificate authorities, provided by a new paragraph (6) (see discussion below). The removal of this paragraph is necessary to achieve the benefits of replacing the SOS list with the new requirements discussed below.

Section (a), new Paragraph (6) – This paragraph requires that certificates that are accompanied by a certificate must have a certificate from one of three third-party certificate program lists. These three Root Certificate Programs represent the vast majority of how operating systems and browsers obtain trusted lists. For a Certificate authority to be successful across Windows, Linux, Android, Chromium, Mac, iPhones, Firefox, and the like, they must obtain acceptance from these programs. The vast majority of the internet relies on these providers to upkeep the status of certificate authorities across the world. If a certificate authority were to be compromised for any reason, these three programs would have the greatest security impact on the removal of trust to a certificate authority in order to quickly mitigate a security event. The addition of this paragraph, including those three programs, is necessary to achieve those goals.

Section (b) – The reference to “Section 22003(b)1-5” is replaced with the word “following” to reference the list that falls under this section. This change is necessary for clarity of reading these regulations.

22004. Provisions for Adding New Technologies to the List of Acceptable Technologies.

This section is eliminated. This section relates to adding new technologies to the SOS’s list of acceptable technologies. Since the changes to Section 22003 remove that list, this section is no longer relevant. This action is necessary for the consistency of these regulations.

22005. Criteria for Public Entities to Use in Accepting Digital Signatures.

Section (d) – This section is added to require public entities to ensure digital signatures they receive are created by an acceptable technology pursuant to section 22003. This places the burden on the public entity to ensure compliance with these regulations rather than the signer of the digital signature. This language is consistent with the existing provisions of Section 22005. The addition of this section is necessary to ensure public entities understand their obligations under these regulations.

ECONOMIC IMPACT STATEMENT

Creation or Elimination of Jobs within the State of California

It is not anticipated that these regulations will create or eliminate jobs within the State of California. These regulations do not create a new digital signature process, but clarify and

streamline existing requirements. These regulations should make it easier for providers of digital signatures (software that people use to digitally sign documents and certification authorities that issue certificates for digitally signed communications with public entities in California) to comply with statutory requirements related to digital signatures, but should not materially affect their costs of doing so.

Creation of New or Elimination of Existing Businesses within the State of California

It is not anticipated that these regulations will create or eliminate existing businesses within the State of California. The improved clarity of how to comply with statutory requirements related to digital signatures in California should make it easier for existing businesses, but are not anticipated to create new businesses or eliminate existing businesses.

Expansion of Businesses or Elimination of Existing Businesses within the State of California

It is not anticipated that these regulations will expand businesses or eliminate existing businesses within the State of California. The improved clarity of how to comply with statutory requirements related to digital signatures in California should make it easier for existing businesses, but are not anticipated to expand businesses or eliminate existing businesses.

Benefits of the Regulations

The emergency regulations, which this regulations package is proposing to make permanent, clarify the use of digital signatures for interactions with state agencies and reduce the chilling effect current regulations have on the use of digital signatures. These regulations are expected to make it easier for providers of digital signatures (software that people use to digitally sign documents and certification authorities that issue certificates for digitally signed communications with public entities in California) to comply with statutory requirements for the use of digital signatures in communication with state agencies. The increased clarity of what digital signature providers are allowed to provide these services, including the burden shifting on signers to state agencies accepting the digital signatures, are expected to make it easier for individuals and businesses to interact with state agencies.

REASONABLE ALTERNATIVES

The only alternative considered was to leave existing regulations unchanged. However, questions about the clarity and difficulty of administering existing regulations indicated that changes were preferable.