

**California Secretary of State
Proposed Regulatory Action: Digital Signatures
Notice**

NOTICE IS HEREBY GIVEN that the California Secretary of State (SOS) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments in writing relevant to the action proposed. Written comments, including those sent by mail, facsimile, or e-mail to the address listed under Contact Persons in this Notice, must be received by the SOS at its office not later than December 31, 2020.

A public hearing is not 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 persons listed below no later than 15 days prior to the close of the written comment period. Following the public hearing, if one is requested, or following the written comment period if no public hearing is requested, the SOS, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact persons and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

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

AUTHORITY AND REFERENCE

Government Code section 16.5 requires the SOS to adopt regulations related to digital signatures.

Authority cited: Section 16.5, Government Code.
Reference cited: Section 16.5, Government Code.

INFORMATIVE DIGEST

As required by Government Code section 16.5, the SOS adopted regulations related to digital signatures. The SOS initially adopted these regulations in 1998. The SOS did not update those regulations until April 2020, when it filed emergency regulations to address concerns raised by stakeholder regarding the complexity of complying with these regulations and limited public understanding of valid digital certificate providers.

The SOS is proposing to make permanent the emergency regulations adopted in April 2020.

Policy Statement Overview / Anticipated Benefits of Proposal

Entities attempting to submit digital signatures according to existing regulations have found them to be confusing. Prior to the adoption of the emergency regulations, the SOS maintained an

Approved List of Digital Signature Certification Authorities, which lists persons or entities that issue certificates related to digital signatures. This list was previously available on the SOS website. This list did not list providers of digital signature services, only certification authorities. However, those attempting to comply with these regulations have viewed this list as being the exclusive provider of digital signature services. This inhibits the use of other services. This has a chilling effect on the use of digital signatures to interact with state agencies.

The SOS is proposing, with these regulations, to make permanent the emergency regulations that 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.

These three Root Certificate Programs in the emergency regulations 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.

These proposed regulations also make non-substantive formatting changes to the existing regulations for increased clarity to the reader.

The emergency regulations offer the following benefits:

- Clarifying the use of digital signatures for interactions with state agencies; and
- Reducing the chilling effect current regulations have on the use of digital signatures.

Consistency/Compatibility with Existing State Regulations

The SOS has determined that these proposed regulations are not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the SOS has concluded that these are the only regulations that concern digital signatures in California.

Documents Incorporated by Reference: None

Documents Relied Upon in Preparing the Regulations: None

FISCAL IMPACT ESTIMATES AND RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: No

Cost to Any Local Agency or School District for Which Government Code Sections 17500 - 17630 Require Reimbursement: None

Adverse Business Impact: The SOS has made an initial determination that the proposed regulatory action will have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. These regulations make complying with statutory requirements related to digital signatures more straightforward, which if anything will have a positive impact on businesses that provide digital signatures and businesses that use digital signatures to communicate with state agencies.

Significant Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability to Compete: The SOS has made an initial determination that this regulatory action will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Representative Private Person or Business: The SOS is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None

Effect on Small Business: The SOS has made an initial determination that the proposed regulatory action will have no effect on small business. These regulations make complying with statutory requirements related to digital signatures more straightforward, which if anything will have a positive impact on small businesses that provide digital signatures and small businesses that use digital signatures to communicate with state agencies.

Result of Economic Impact Assessment/Analysis Summary Comments: The full Economic Impact Statement is presented in the Initial Statement of Reasons. These regulations are not anticipated to create or eliminate jobs within the State of California, create or eliminate existing businesses within the State of California, or expand or eliminate existing businesses within the State of California. These regulations make complying with statutory requirements related to digital signatures more straightforward.

CONSIDERATION OF ALTERNATIVES

The agency must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose

for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may present statements or arguments with respect to alternatives to the proposed regulatory action.

AVAILABILITY OF THE INITIAL STATEMENT OF REASONS, THE TEXT OF PROPOSAL AND THE RULEMAKING FILE

The SOS has prepared an Initial Statement of the reasons for the proposed action and has available all the information upon which the proposal is based. The Initial Statement of Reasons is available on the SOS's website.

Copies of the express language of the proposed regulations, any document incorporated by reference, the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained throughout the rulemaking process upon request from the SOS contact or on the website listed below.

The documents and other information are available for public inspection during the dates of the public comment period, described below, excluding weekends and holidays, from 8:00 a.m. through 5:00 p.m. The rulemaking file is maintained at the following address:

California Secretary of State
Political Reform Division
1500 11th Street, Room 495
Sacramento, CA 95814

Due to restrictions related to COVID-19, the SOS' public counter is not open to the public. Please contact the contact persons below to arrange for public inspection of the rulemaking documents. Options for public inspection during COVID-19 may include having the rulemaking documents emailed to you or scheduling an in-person review.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

A Final Statement of Reasons will be created after the closing of the public comment period. A copy of the final statement of reasons can be obtained once it has been prepared from the contact persons named below or by accessing the website listed below.

CONTACT PERSONS

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Taylor Kayatta
California Secretary of State

1500 11th St., Room 495
Sacramento, CA 95814
(916) 695-1530
tkayatta@sos.ca.gov

The backup contact person is:

Ted Muhlhauser
California Secretary of State
1500 11th St., 6th Floor
Sacramento, CA 95814
(916) 695-1634
Ted.Muhlhauser@sos.ca.gov

Website Access: Materials regarding this proposal can be found at:

<https://www.sos.ca.gov/administration/regulations/>