

ADOPTED TEMPORARY REGULATION
OF THE SECRETARY OF STATE

LCB File No. T025-99

Effective March 12, 1999

EXPLANATION - Matter in *italics* is new; matter in brackets [] is material to be omitted.

(Revised by SOS pursuant to testimony at hearings.)

AUTHORITY: §§ 1 to 22, inclusive, 24, 26 to 36, inclusive, 38 to 44, inclusive, 46, 47, 56, 63, 65, 66, 67, 69, 72 to 79, inclusive, 89, 91 to 95, inclusive, 99 and 100, NRS 239.043 and 239.044; §§ 23, 25, 37, 45, 48 to 55, inclusive, 57 to 62, inclusive, 64, 68, 70, 71, 80, 81, 82, 84 to 88, inclusive, 90, 96, 97 and 98, NRS 239.044; and § 83, NRS 239.043.

Section 1. Chapter 239 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 100, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 100, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 42, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Accept a certificate” means:*

- 1. To manifest approval of a certificate, with knowledge or notice of its contents; or*
- 2. To apply to a recognized certification authority for a certificate, if a certificate is issued pursuant to the application before the applicant:*

(a) Delivers to the certification authority notice of the intent of the applicant to cancel or revoke the application; and

(b) Obtains from the certification authority a written acknowledgment, executed by an authorized representative of the certification authority, of the receipt of the notice delivered pursuant to paragraph (a).

Sec. 4. *“Asymmetric cryptosystem” means an algorithm or series of algorithms that provide a secure key pair.*

Sec. 5. *“Authorized certification authority” means the secretary of state or a licensee.*

Sec. 6. *“Certificate” means a computer-based record that:*

- 1. Identifies the certification authority issuing it;*
- 2. Identifies a subscriber;*
- 3. Sets forth the public key of the subscriber; and*
- 4. Is digitally signed by the certification authority issuing it.*

Sec. 7. *“Certification authority” means a person who issues a certificate.*

Sec. 8. *“Certify” means, with reference to a certificate, to declare with ample opportunity to reflect after apprising oneself of all material facts.*

Sec. 9. *“Confirm” means to ascertain through appropriate inquiry and investigation.*

Sec. 10. *“Correspond” means, with reference to keys, belonging to the same key pair.*

Sec. 11. *“Digital signature” means a transformation of a message using an asymmetric cryptosystem such that a person who has the initial message and the public key of the signer can accurately determine whether:*

- 1. The transformation was created using the private key that corresponds to the public key of the signer; and*
- 2. The initial message has been altered since the transformation was made.*

Sec. 12. *“Disclosure record” means an on-line, publicly accessible record maintained by the secretary of state concerning a licensee.*

Sec. 13. *“Foreign license” means a license to operate as a certification authority issued by a governmental entity outside of this state.*

Sec. 14. *“Hearing officer” means the secretary of state or a hearing officer designated by him.*

Sec. 15. *“Hold a private key” means to be authorized to use a private key.*

Sec. 16. *“Incorporate by reference” means to make a message a part of another message by identifying the message to be incorporated and expressing the intention that it be incorporated.*

Sec. 17. *“Issue a certificate” means the creation of a certificate and notification of the subscriber identified in the certificate of the contents of the certificate.*

Sec. 18. *“Key pair” means a private key and its corresponding public key in an asymmetric cryptosystem, which may be used in such a manner that the public key can verify a digital signature created by the private key.*

Sec. 19. *“License” means a license to operate as a certification authority issued by the secretary of state.*

Sec. 20. *“Licensee” means a certification authority who holds a license.*

Sec. 21. *“Message” means a digital representation of information.*

Sec. 22. *“Notify” means to communicate a fact to a person in a manner reasonably likely under the circumstances to impart knowledge of the information to that person.*

Sec. 23. *“Operative personnel” means one or more natural persons acting as a certification authority or his agent, or in the employment of or under contract with a certification authority, who have:*

- 1. Managerial or policymaking responsibilities for the certification authority; or*
- 2. Duties directly involving the issuance of certificates, the creation of private keys or the administration of the computing facilities of the certification authority.*

Sec. 24. *“Person” means a natural person, any organization that is capable of signing a document, either legally or as a matter of fact, a government, a governmental agency and a political subdivision of a government.*

Sec. 25. *“Practice statement” means a declaration of the practices that a certification authority:*

- 1. Generally employs in issuing certificates; or*
- 2. Employed in issuing a particular certificate.*

Sec. 26. *“Private key” means the key of a key pair used to create a digital signature.*

Sec. 27. *“Public key” means the key of a key pair used to verify a digital signature.*

Sec. 28. *“Publish” means to record or file in a repository.*

Sec. 29. *“Qualified right to payment” means an award of damages entered by a court that has jurisdiction over a licensee for acts by the licensee within the scope of his activities as a certification authority.*

Sec. 30. *“Recognized certification authority” means an authorized certification authority or a certification authority whose foreign license is recognized by the secretary of state pursuant to section 62 of this regulation.*

Sec. 31. *“Recognized repository” means the state repository or a repository designated by the secretary of state pursuant to section 84 of this regulation.*

Sec. 32. *“Repository” means a system for storing and retrieving certificates and other information relevant to digital signatures.*

Sec. 33. *“Revoke a certificate” means to make a certificate ineffective permanently from a specified time forward through means of a notation on the certificate or the inclusion of the certificate in a set of revoked certificates.*

Sec. 34. *“Rightfully hold a private key” means to hold a private key that:*

1. Has not been disclosed by the holder of the key or his agents to any person who is not authorized to use the key; and

2. Has not been obtained by the holder of the key through theft, deceit, eavesdropping or other unlawful means.

Sec. 35. *“State repository” means the repository operated pursuant to section 89 of this regulation.*

Sec. 36. *“Subscriber” means a person who:*

1. Is identified as such in a certificate;

2. Accepts the certificate; and

3. Holds the private key that corresponds to the public key set forth in the certificate.

Sec. 37. *“Suitable guaranty” means a guaranty that satisfies the requirements of section 54 of this regulation.*

Sec. 38. *“Suspend a certificate” means to make a certificate ineffective temporarily for a specified time forward.*

Sec. 39. *“Time stamp” means:*

1. A digitally signed notation that:

(a) Is appended or attached to a message, digital signature or certificate; and

(b) Indicates at least:

(1) The date and time the notation was appended or attached; and

(2) The identity of the person appending or attaching the notation; or

2. To append or attach such a notation to a message, digital signature or certificate.

Sec. 40. *“Trustworthy system” means a system of computer hardware and software that complies with the requirements of section 56 of this regulation.*

Sec. 41. *“Valid certificate” means a certificate that:*

1. Has been issued by a recognized certification authority;

2. Has been accepted by the subscriber identified in the certificate;

3. Has not been suspended or revoked; and

4. Has not expired.

Sec. 42. *“Verify a digital signature” means, in relation to a given digital signature, message and public key, to determine accurately that:*

1. The digital signature was created by the private key corresponding to the public key; and

2. The message has not been altered since the digital signature was created.

Sec. 43. *For the purposes of NRS 239.041 to 239.044, inclusive, the secretary of state interprets the term “electronic symbol” to mean a digital signature.*

Sec. 44. *The provisions of sections 2 to 100, inclusive, of this regulation are hereby declared to be severable. If any of the provisions of sections 2 to 100, inclusive, of this regulation is held invalid, or if the application of any of those provisions to any person, thing or circumstance is held invalid, that invalidity does not affect any other provision of sections 2*

to 100, inclusive, of this regulation that can be given effect without the invalid provision or application.

Sec. 45. *The provisions of sections 2 to 100, inclusive, of this regulation do not prohibit a licensee from conforming to any standards or requirements that are more stringent than, but nevertheless consistent with, those provisions.*

Sec. 46. *The secretary of state hereby adopts by reference:*

1. The technical standards designated as X.509, version 3, as adopted by the International Telecommunication Union. A copy of those standards may be obtained at no cost from the Office of the Secretary of State at 101 North Carson Street, Suite 3, Carson City, Nevada 89701-4786.

2. The provisions of the Protection Profile for Commercial Security 2, Augmented Controlled Access Protection, version 0.1, as developed by the National Institute of Standards and Technology. A copy of those provisions may be obtained at no cost from the Office of the Secretary of State at 101 North Carson Street, Suite 3, Carson City, Nevada 89701-4786.

Sec. 47. *The secretary of state will:*

1. Maintain a publicly accessible data base that contains:

(a) A disclosure record for each licensee; and

(b) A list of all judgments filed with the secretary of state pursuant to section 81 of this regulation within the past 5 years; and

2. Publish the contents of the data base in at least one recognized repository.

Sec. 48. *1. Except as otherwise provided in section 49 of this regulation, the secretary of state may issue a license to or renew the license of a certification authority who:*

(a) Applies in writing to the secretary of state for the issuance or renewal of a license;

- (b) Meets the qualifications for a license set forth in subsection 2; and*
- (c) Pays the applicable fees imposed pursuant to section 53 of this regulation.*

2. To qualify for a license, a certification authority must:

- (a) Be the subscriber of a certificate published in a recognized repository;*
- (b) Use a secure method for limiting access to its private key;*
- (c) Maintain an office or registered agent for service of process in this state; and*
- (d) Comply with the provisions of sections 2 to 100, inclusive, of this regulation.*

3. The issuance or renewal of a license is valid for 1 year unless the license is earlier revoked or otherwise terminated. The secretary of state may notify a licensee before its license is due to expire, but any failure to do so does not excuse a licensee from failing to renew the license within that period.

Sec. 49. *The secretary of state will not issue a license to any governmental entity other than the department of information technology. For the purposes of sections 2 to 100, inclusive, of this regulation, the department of information technology is not required to:*

- 1. Obtain or submit a suitable guaranty; or*
- 2. Comply with the provisions of section 55 of this regulation.*

Sec. 50. *1. The secretary of state may suspend or revoke a license if the licensee fails to maintain his qualifications for the license. The secretary of state will inform the licensee of the suspension or revocation by mailing a written notice to the mailing address or electronic mail address of the licensee specified on the application for the license. The notice must state the date when the suspension or revocation becomes effective. Except as otherwise provided in subsection 2:*

(a) A suspension or revocation pursuant to this section must not become effective until at least 30 days after the mailing of the notice of the suspension or revocation.

(b) If the licensee files an application for a hearing on the matter before the effective date specified in the notice mailed pursuant to this subsection, the suspension or revocation does not become effective until so ordered by the hearing officer.

2. The secretary of state may suspend a license immediately pending the completion of proceedings for the revocation of the license, if the secretary of state issues a written finding that the licensee has:

(a) Used the license in the violation of a state or federal criminal statute; or

(b) Engaged in conduct that creates a serious risk of loss to any person if the license is not immediately suspended.

If the secretary of state suspends a license pursuant to this subsection, he will take such action as is appropriate to expedite the completion of proceedings for the revocation of the license.

Sec. 51. *Except as otherwise provided in section 49 of this regulation, an applicant for the issuance or renewal of a license must submit to the secretary of state:*

1. A completed application that complies with the requirements of section 52 of this regulation;

2. The applicable fees imposed pursuant to section 53 of this regulation;

3. A certificate that:

(a) Identifies the applicant as the subscriber; and

(b) Is published in a recognized repository;

4. A suitable guaranty;

5. Documentation of compliance with the provisions of section 55 of this regulation;

6. *A report of an audit of the computer hardware and software of the applicant which:*

- (a) Establishes that the applicant uses a trustworthy system; and*
- (b) Was obtained pursuant to an audit performed in compliance with the requirements of sections 57 and 58 of this regulation, except that the audit and report required for the initial issuance of a license is not required to include any matters other than compliance with the requirements of paragraph (a);*

7. *The documentation required pursuant to section 59 of this regulation; and*

8. *A practice statement that complies with the requirements of section 71 of this regulation.*

Sec. 52. *An application for the issuance or renewal of a license must be on a form prescribed by the secretary of state and include:*

1. *The name of the applicant;*

2. *The uniform business identifier number of the applicant, if any;*

3. *The mailing address and, if different, the physical address of the applicant;*

4. *The telephone number of the applicant;*

5. *The electronic mail address of the applicant;*

6. *The name and address of the registered agent in this state for service of process upon the applicant, including the physical address and, if different, the mailing address; and*

7. *The names of all operative personnel of the applicant.*

Sec. 53. *The secretary of state will charge the following licensing fees:*

1. *For the issuance or renewal of a license:*

(a) For the first year of operation as a licensee, \$1,400;

(b) For the second year of operation as a licensee, \$1,800; and

(c) For the third and each subsequent year of operation as a licensee, \$2,800,

in addition to any other fees imposed pursuant to this section.

2. For ascertaining the qualifications of the operative personnel of an applicant, \$25 per person plus \$50 per person for the administration and scoring of each examination pursuant to section 60 of this regulation.

3. For the designation of a repository as a recognized repository:

(a) For the first year of operation as a recognized repository, \$1,400;

(b) For the second year of operation as a recognized repository, \$1,800; and

(c) For the third and each subsequent year of operation as a recognized repository, \$2,800,

in addition to any other fees imposed pursuant to this section.

4. For the recognition of a foreign license:

(a) If the applicant for recognition has not held the foreign license for 1 year or more, \$1,400;

(b) If the applicant for recognition has held the foreign license for 1 year or more but less than 2 years, \$1,800; and

(c) If the applicant for recognition has held the foreign license for 2 years or more, \$2,800.

Sec. 54. 1. *To qualify as a suitable guaranty, a guaranty must:*

(a) Consist of:

(1) A surety bond executed by a surety company authorized to do business in this state; or

(2) An irrevocable letter of credit issued by a financial institution authorized to do business in this state;

(b) Be for \$50,000 or such greater amount as the secretary of state deems appropriate;

(c) Be in a form that is prescribed or approved by the secretary of state;

(d) Identify the surety company or financial institution by name, mailing address and physical address, and include the number or a copy of the document authorizing the surety company or financial institution to do business in this state;

(e) Identify the certification authority for whom the guaranty is issued;

(f) Be payable to the secretary of state for the benefit of any person in favor of whom a qualified right to payment is entered against the certification authority; and

(g) Specify that the guaranty is:

(1) Issued for filing pursuant to the provisions of sections 2 to 100, inclusive, of this regulation and subject to the conditions set forth in those provisions; and

(2) Effective for not less than the term of the license of the certification authority.

2. A suitable guaranty may specify that the total annual liability of the surety company or financial institution to all persons making claims against the guaranty is limited to the face amount of the guaranty.

Sec. 55. *Except as otherwise provided in section 49 of this regulation:*

1. When a certification authority applies for the issuance or renewal of a license, its current assets must exceed its current liabilities by more than \$25,000.

2. Compliance with subsection 1 must be demonstrated by a financial statement that is:

(a) Signed by a certified public accountant who holds a certificate to engage in the practice of public accounting in this state; and

(b) Dated not more than 60 days before the date it is received by the secretary of state.

Sec. 56. *A licensee shall maintain a system of computer hardware and software that:*

1. Is reasonably secure from intrusion and misuse;

2. Provides a reasonable level of availability, reliability and correct operation;

3. *Is reasonably suited to performing its intended functions; and*

4. *Is in material compliance with the provisions of the Protection Profile for Commercial Security 2, Augmented Controlled Access Protection, version 0.1, as adopted by reference pursuant to section 46 of this regulation. The secretary of state will determine whether compliance is material:*

(a) *In accordance with the provisions of sections 2 to 100, inclusive, of this regulation; and*

(b) *In a manner that is consistent with state and federal law and reasonable for the context in which the system is used.*

Sec. 57. *1. A licensee shall obtain an audit at least once each year to receive an opinion as to whether the licensee is in material compliance with the requirements of sections 2 to 100, inclusive, of this regulation. If the secretary of state has designated a repository operated by the licensee as a recognized repository, the audit must include the operation of the recognized repository.*

2. The auditor shall exercise reasonable professional judgment in determining whether a condition that is not in strict compliance with the requirements of sections 2 to 100, inclusive, of this regulation is material, taking into consideration the particular circumstances and context. In addition to any other conditions the auditor determines to be material, the auditor shall consider as material:

(a) *Any condition relating to the validity of a certificate that does not comply with the requirements of sections 2 to 100, inclusive, of this regulation.*

(b) *Noncompliance with the requirements of section 61 of this regulation.*

(c) *The performance of any activities in the capacity of a certification authority on a system that is not in compliance with the requirements of section 56 of this regulation.*

3. *The licensee must file a copy of the audit report with the secretary of state before its license may be renewed. The report may be filed electronically in accordance with the requirements of § 2-100, inclusive, of these regulations. The licensee is not required to file the complete audit report if he files a summary of the report that:*

(a) Describes all audit exceptions and conditions of noncompliance included in the complete report, including, without limitation, any conditions described in subsection 2; and

(b) Bears the signature of the auditor.

Sec. 58. *Each audit required pursuant to section 57 of this regulation must be performed by a certified public accountant who:*

1. Is certified pursuant to chapter 628 of NRS or a similar law of another jurisdiction; and

2. Holds or, for the purpose of the audit, employs, contracts with or associates with a person who holds a current certification as:

(a) A certified information systems auditor issued by the Information Systems Audit and Control Association; or

(b) A certified information systems security professional issued by the International Information Systems Security Certification Consortium.

The audit report or a letter accompanying that report must disclose the name of each person who possesses the certification required pursuant to this section.

Sec. 59. *An applicant for the issuance or renewal of a license must submit to the secretary of state such documentation as the secretary of state requires to ensure that all operative personnel of the applicant are qualified to act in that capacity. The documentation must include, for each person who acts in that capacity:*

1. A declaration, executed by the person under penalty of perjury, that:

(a) Specifies his name, including all names by which he has been known in the past, his date of birth and his business address;

(b) Specifies each country, other than the United States, in which the person resided during the past 5 years and states the period of that residency; and

(c) States that the person has not been convicted in any jurisdiction during the past 7 years of any felony and has never been convicted in any jurisdiction of a crime involving fraud, deception or a false statement.

2. A written review of the criminal history of the person which supports the statement made pursuant to paragraph (c) of subsection 1, unless the requirements of this subsection have been satisfied for a particular person within the past 2 years by the current or a previous applicant.

The review must include reports of the criminal history of the person which are:

(a) Compiled and certified by:

(1) The central repository for Nevada records of criminal history or the local law enforcement agency for the area where the person resided and was employed for the previous 7 years; and

(2) The local law enforcement agency for such other jurisdictions as the secretary of state requires;

(b) Dated not more than 30 days before the date of their submission to the secretary of state; and

(c) Reasonably sufficient to disclose any criminal convictions during the previous 7 years in any jurisdiction in the United States and its territories and possessions, and in any other jurisdiction specified pursuant to paragraph (b) of subsection 1.

3. Proof of compliance with section 60 of this regulation.

Sec. 60. *1. An applicant for the issuance or renewal of a license must ensure that all its operative personnel have satisfactorily completed a written examination developed by the secretary of state to demonstrate their knowledge and proficiency regarding the provisions of sections 2 to 100, inclusive, of this regulation.*

2. The secretary of state will:

(a) Develop the examination required pursuant to subsection 1 in an open-book format and may update or modify the examination at any time;

(b) Provide access to the examination upon request, and may provide electronic access, except that no person will be allowed to take the examination more than once during any period of 30 days;

(c) Indicate at the beginning of the examination the percentage or number of questions which must be answered correctly to constitute satisfactory completion of the examination; and

(d) Upon application at any time, certify that a person has satisfactorily completed the examination. Certification pursuant to this paragraph is valid for 2 years.

Sec. 61. *1. A licensee shall not allow any person to undertake any of the responsibilities or duties of its operative personnel:*

(a) Unless the person is certified by the secretary of state pursuant to section 60 of this regulation.

(b) If the licensee knows or, based upon the documentation described in section 59 of this regulation, should know that the person has been convicted in any jurisdiction during the past 7 years of any felony or has ever been convicted in any jurisdiction of a crime involving, without limitation, fraud, deception or a false statement.

2. *If a licensee discovers that a person who has undertaken any of the responsibilities or duties of its operative personnel has been convicted as described in paragraph (b) of subsection 1, the licensee shall:*

(a) Immediately remove the person from that position; and

(b) Within 3 business days after making that discovery, notify the secretary of state of his action to remove the person from that position.

Sec. 62. *1. The secretary of state will recognize a foreign license only if:*

(a) The certification authority who holds the foreign license, in addition to complying with any other legal requirements for the transaction of business in this state, submits to the secretary of state:

(1) A certified copy of his foreign license; and

(2) The applicable fee imposed pursuant to section 53 of this regulation; and

(b) The secretary of state determines that the governmental entity that issued the foreign license imposes requirements substantially similar to the requirements of sections 2 to 100, inclusive, of this regulation.

2. The secretary of state will determine that the requirements of a governmental entity are substantially similar to the requirements of sections 2 to 100, inclusive, of this regulation if, in addition to any other factors the secretary of state deems to be material, the governmental entity requires that a certification authority must, as a condition to holding the foreign license:

(a) Issue certificates:

(1) Based upon an asymmetric cryptosystem; and

(2) Using a trustworthy system;

(b) Provide a guaranty which is substantially similar to a suitable guaranty in an amount of not less than \$25,000;

(c) Employ as operative personnel only persons who:

(1) Have demonstrated their knowledge and proficiency in the legal requirements of that governmental entity regarding digital signatures; and

(2) Have not been convicted of a felony within the past 7 years; and

(d) Comply with a legally established system for the enforcement of the requirements of that governmental entity regarding digital signatures.

3. The secretary of state will:

(a) Make available, upon request, a list of the governmental entities that the secretary of state has determined meet the requirements of subsection 2; and

(b) Consider a governmental entity for addition to that list upon:

(1) The request of the governmental entity or a certification authority licensed by the governmental entity; and

(2) The receipt of a copy of the licensing requirements of the governmental entity, together with an English translation if it is in a foreign language.

4. The recognition of a foreign license pursuant to this section is valid:

(a) Until the foreign license expires or otherwise becomes invalid; or

(b) For 1 year,

whichever period is less.

5. This section does not prohibit a certification authority who holds a foreign license from obtaining a license pursuant to sections 2 to 100, inclusive, of this regulation.

Sec. 63. *A licensee shall use, and ensure that each of his subscribers use, only a trustworthy system to:*

- 1. Create a private key;*
- 2. Issue, suspend or revoke a certificate; and*
- 3. Publish or otherwise give notice of the issuance, suspension or revocation of a certificate.*

Sec. 64. *A licensee:*

1. Except as otherwise provided in subsection 2 and section 99 of this regulation, shall disclose, upon request, any practice statements and facts that are material to the reliability of a certificate the licensee has issued or the ability of the licensee to perform his services.

2. May require, as a condition precedent to his compliance with subsection 1, that the request be:

- (a) Written, signed, reasonably specific and from an identified person; and*
- (b) Accompanied by the payment of reasonable compensation for compliance with the request.*

Sec. 65. *An authorized certification authority may issue a certificate to a subscriber only after:*

- 1. The certification authority has:*
 - (a) Received a request for the issuance of a certificate signed by the prospective subscriber;**and*
 - (b) Confirmed, which shall include requiring a subscriber and his agent or agents to certify the accuracy of relevant information under penalty of perjury, that:*

(1) The prospective subscriber is the person to be identified in the requested certificate;

- (2) *The prospective subscriber rightfully holds a private key which:*
- (I) *Is capable of creating a digital signature; and*
 - (II) *Corresponds to the public key to be set forth in the requested certificate;*
- (3) *The public key to be set forth in the requested certificate can be used to verify a digital signature created by the private key held by the prospective subscriber;*
- (4) *The information to be included in the requested certificate is accurate;*
- (5) *The requested certificate provides sufficient information to locate or identify one or more repositories in which notice of the suspension or revocation of the certificate will be published if the certificate is suspended or revoked; and*
- (6) *If the prospective subscriber is acting through one or more agents, the prospective subscriber has:*
- (I) *Authorized the agent or agents to have custody of his private key, to request the issuance of a certificate setting forth the corresponding public key and to sign digitally on behalf of the prospective subscriber; and*
 - (II) *Ensured that adequate safeguards exist to prevent the creation of a digital signature that exceeds any limitations on the authority of the agent or agents; and*
2. *The subscriber and his agent or agents have agreed to:*
- (a) *Exercise reasonable care to retain control of the private key and prevent its disclosure to any person who is not authorized to create the digital signature of the subscriber until:*
- (1) *The expiration of the certificate;*
 - (2) *Notice of the revocation of the certificate is published pursuant to section 79 of this regulation; or*

(3) One business day after the subscriber has submitted to the certification authority a written request for the revocation of the certificate and such evidence as is reasonably sufficient to confirm that the person requesting revocation is the subscriber or an agent of the subscriber who is authorized to make the request, whichever occurs first; and

(b) Indemnify the authorized certification authority for any loss or other damage resulting from the issuance or publication of a certificate in reliance upon any:

(1) Material misrepresentation of fact by the subscriber, agent or agents; or

(2) Failure by the subscriber, agent or agents to disclose a material fact,

if the misrepresentation or failure to disclose was negligent or intended to deceive the certification authority or a person relying on the certificate.

Sec. 66. *A certificate issued by an authorized certification authority:*

1. Must indicate the date upon which the certificate expires.

2. May include any disclaimers and limitations on obligations, losses or damages to be asserted by the certification authority.

3. Must comply with the standards for basic certificate fields specified in section 4.1 of the technical standards designated as X.509, version 3, as adopted by reference pursuant to section 46 of this regulation, except that fields are not required for extensions of data. If fields are used for extensions of data:

(a) The use must conform to the guidelines specified in sections 4.1.2.1 and 4.2 of the technical standards designated as X.509, version 3, as adopted by reference pursuant to section 46 of this regulation; and

(b) The fields may be displayed on the certificate.

Sec. 67. *Except as otherwise provided in section 69 of this regulation, the secretary of state:*

1. By issuing a certificate:

(a) Warrants to the subscriber named in the certificate that the certificate:

(1) Contains no information known by the secretary of state to be false; and

(2) Satisfies all material requirements of sections 2 to 100, inclusive, of this regulation.

(b) Promises to the subscriber named in the certificate:

(1) To act promptly to suspend or revoke a certificate in accordance with sections 2 to 100, inclusive, of this regulation; and

(2) To notify the subscriber within a reasonable time of any facts known to the secretary of state that significantly affect the validity or reliability of the certificate after issuance.

2. By issuing and publishing a certificate, certifies to all persons who reasonably rely on the information contained in the certificate or on a digital signature verifiable by the public key set forth in the certificate that:

(a) The secretary of state has issued the certificate to the subscriber;

(b) The subscriber has accepted the certificate;

(c) The information in the certificate identified as confirmed by the secretary of state is accurate; and

(d) All information foreseeably material to the reliability of the certificate is stated or incorporated by reference in the certificate.

Sec. 68. *Except as otherwise provided in section 69 of this regulation, a licensee shall:*

1. When he issues a certificate:

(a) Warrant to the subscriber named in the certificate that:

(1) The certificate contains no information known by the licensee to be false;

(2) The certificate satisfies all material requirements of sections 2 to 100, inclusive, of this regulation; and

(3) The licensee has not exceeded any limitations on his license in issuing the certificate.

(b) Promise to the subscriber named in the certificate, unless the licensee and subscriber agree otherwise:

(1) To act promptly to suspend or revoke a certificate in accordance with sections 2 to 100, inclusive, of this regulation; and

(2) To notify the subscriber within a reasonable time of any facts known to the licensee that significantly affect the validity or reliability of the certificate after issuance.

(c) Certify to all persons who reasonably rely on the information contained in the certificate or on a digital signature verifiable by the public key set forth in the certificate that:

(1) The subscriber has accepted the certificate;

(2) The information in the certificate identified as confirmed by the licensee is accurate;

(3) All information foreseeably material to the reliability of the certificate is stated or incorporated by reference in the certificate; and

(4) The licensee has complied with all applicable laws and regulations of this state governing the issuance of the certificate.

2. When he publishes a certificate, certify to the repository where the certificate is published and to all persons who reasonably rely on the information contained in the certificate that the licensee has issued the certificate to the subscriber.

Sec. 69. *1. Upon giving notice of the revocation of a certificate as required pursuant to section 79 of this regulation, an authorized certification authority is discharged from any*

liability or other responsibility, with regard to any transactions occurring after the notice is given, for any warranty or certification provided pursuant to section 67 or 68 of this regulation regarding the certificate.

2. When a certificate expires, an authorized certification authority is discharged from any liability or other responsibility, with regard to any transactions occurring after the expiration occurs, for any warranty or certification provided pursuant to section 67 or 68 of this regulation regarding the certificate.

3. When a certificate expires, the subscriber named in the certificate and the authorized certification authority that issued the certificate cease to certify pursuant to § 2-100, inclusive, of these regulations.

Sec. 70. *1. A licensee shall not conduct his business as a certification authority in any manner that creates an unreasonable risk of loss to any subscriber of the licensee, any person relying on a certificate issued by the licensee or any repository.*

2. If the secretary of state determines that the activities of a licensee create a risk of loss to any subscriber of the licensee, any person relying on a certificate issued by the licensee or any repository, the secretary of state may publish in any repository a brief statement generally advising subscribers, persons who rely on digital signatures and other repositories about those activities. A licensee who is the subject of such an advisory statement may protest the publication of the statement by filing with the secretary of state a written defense that does not exceed the equivalent of 10,000 bytes. Upon receiving such a protest, the secretary of state will publish the protest in each repository where the secretary of state published the advisory statement, promptly schedule a hearing on the matter and notify the licensee of the time and place of the hearing.

3. *After the completion of a hearing held pursuant to subsection 2, the secretary of state will publish his decision on the matter in the state repository and:*

(a) If he determines that publication of the advisory statement is unwarranted, rescind the advisory statement;

(b) If he determines that publication of the advisory statement is no longer warranted, cancel the advisory statement;

(c) If he determines that publication of the advisory statement is warranted, continue to publish the advisory statement with any amendments he determines to be appropriate; or

(d) Take such other action as he determines is necessary to reduce or eliminate the risk of loss to any subscriber of the licensee, any person relying on a certificate issued by the licensee and any repository.

Sec. 71. *A licensee shall file with the secretary of state a written practice statement declaring the practices the licensee uses in issuing, suspending and revoking certificates. The statement must include, without limitation:*

1. If certificates are issued by class, the necessary criteria for each class, including the methods for identifying subscribers applicable to each class;

2. A written description of all representations required by the licensee from a subscriber regarding the responsibility of the subscriber to protect his private key; and

3. A disclosure of any:

(a) Warnings, limitations on liability, disclaimers of warranty and provisions for indemnity and holding harmless upon which the licensee intends to rely;

(b) Disclaimers and limitations on obligations, losses or damages to be asserted by the licensee; and

(c) Mandatory procedures for the resolution of disputes, including any provisions regarding the choice of forum or applicable law.

Sec. 72. *1. The secretary of state will publish in the state repository and any other recognized repository he deems appropriate a disclosure record for each licensee. A disclosure record will include, without limitation:*

(a) The name, mailing address, telephone number and electronic mail address of the surety company or financial institution that issued the suitable guaranty for the licensee, and the date of expiration of the suitable guaranty;

(b) A copy of the most recent practice statement filed with the secretary of state by the licensee pursuant to sections 2 to 100, inclusive, of this regulation;

(c) A copy of the summary or report of the most recent audit of the licensee filed with the secretary of state pursuant to sections 2 to 100, inclusive, of this regulation;

(d) Information regarding the current status of the license, including a disclosure of any suspension or revocation and, if a suspension or revocation is currently pending proceedings for administrative or judicial review, a statement of that fact;

(e) A statement of whether a repository operated by the licensee has been designated as a recognized repository and information sufficient to locate or identify any repository the licensee operates or otherwise uses;

(f) A list of all judgments regarding the licensee filed with the secretary of state pursuant to section 81 of this regulation within the past 5 years; and

(g) Any other information required by sections 2 to 100, inclusive, of this regulation.

2. The secretary of state will update a disclosure record when he discovers that any information contained in the disclosure record has changed or is no longer accurate.

3. *In carrying out this section, the secretary of state will rely on records received by his office and is not obligated to conduct any investigation or other inquiry regarding the information contained in those records.*

Sec. 73. *1. If the secretary of state issues a certificate and:*

(a) The subscriber accepts the certificate, the secretary of state will publish a signed copy of the certificate in the state repository.

(b) The subscriber does not accept the certificate, the secretary of state will not publish the certificate or, if the secretary of state has already published the certificate, will cancel that publication.

2. If a licensee issues a certificate and:

(a) The subscriber accepts the certificate, the licensee shall, except as otherwise provided by agreement between the licensee and subscriber, publish a signed copy of the certificate in a recognized repository agreed upon by the licensee and subscriber.

(b) The subscriber does not accept the certificate, the licensee shall not publish the certificate or, if the licensee has already published the certificate, shall cancel that publication.

Sec. 74. *1. If an authorized certification authority confirms that a certificate he has issued was not issued in accordance with the requirements of section 65 of this regulation, the certification authority shall immediately revoke the certificate.*

2. An authorized certification authority may suspend a certificate he has issued for such a reasonable period, not to exceed 96 hours, as is necessary to conduct an investigation to confirm any grounds for revocation of the certificate pursuant to subsection 1.

3. *An authorized certification authority shall notify the subscriber as soon as practicable after the certification authority determines to suspend or revoke a certificate pursuant to this section.*

Sec. 75. *1. The secretary of state may:*

(a) Order a licensee to revoke a certificate the licensee has issued if, after providing the licensee and subscriber with notice of the order and an opportunity to be heard on the matter, the secretary of state determines that:

(1) The certificate was issued without substantial compliance with the provisions of sections 2 to 100, inclusive, of this regulation; and

(2) The noncompliance poses a significant risk to persons who may reasonably rely on the certificate.

(b) Order a licensee to suspend, for not more than 96 hours, a certificate the licensee has issued if the secretary of state determines that an emergency requires an immediate remedy. The secretary of state will mail the order, together with a summary of the facts upon which he based his determination, to the licensee at the mailing address or electronic mail address of the licensee specified on the application for the license.

2. *A licensee shall comply with any order issued by the secretary of state pursuant to this section.*

Sec. 76. *1. Except as otherwise provided in subsection 3, an authorized certification authority shall, within 24 hours after the receipt of all information he requires pursuant to this subsection, suspend a certificate he has issued, for not more than 96 hours, if the suspension is requested by a person who the certification authority reasonably believes to be an appropriate person. The certification authority is not required to confirm that the person requesting the*

suspension is an appropriate person, but may require the person to provide evidence, which may include a statement given under oath or affirmation, that the person is an appropriate person.

2. Except as otherwise provided in subsection 3, the secretary of state may order the suspension of a certificate issued by a licensee, for not more than 96 hours, if the suspension is requested by a person who identifies himself as an appropriate person and represents that the licensee is unavailable, and:

(a) The person requesting the suspension provides the secretary of state with evidence, which may include a statement given under oath or affirmation, that the person is an appropriate person and that the licensee is unavailable; or

(b) The secretary of state is otherwise satisfied that the person requesting the suspension is an appropriate person and that the licensee is unavailable.

A licensee shall comply with any order issued by the secretary of state pursuant to this subsection within 24 hours after the licensee receives the order.

3. The subscriber named in a certificate issued by an authorized certification authority may agree with the authorized certification authority to limit or preclude the suspension of the certificate pursuant to this section, except that any agreement which limits or precludes the suspension of a certificate pursuant to subsection 2 is effective only if notice of the agreement is published in the certificate.

4. As used in this section, "appropriate person" means:

(a) The subscriber named in the certificate;

(b) A person authorized to act for the subscriber; or

(c) If the subscriber is unavailable, a person acting on behalf of the subscriber.

Sec. 77. *Except as otherwise agreed by a subscriber and authorized certification authority, the authorized certification authority shall terminate the suspension of a certificate pursuant to section 76 of this regulation if:*

1. The termination is requested by a person who the authorized certification authority confirms is the subscriber named in the suspended certificate or an agent of the subscriber who is authorized to request the termination; or

2. The authorized certification authority discovers and confirms that the request for suspension was made without the authorization of the subscriber. This subsection does not require an authorized certification authority to confirm a request for the suspension of a certificate pursuant to section 76 of this regulation.

Sec. 78. *1. An authorized certification authority shall revoke a certificate he has issued:*

(a) Within 1 business day after he receives:

(1) A written request for revocation from the subscriber named in the certificate; and

(2) Evidence which is reasonably sufficient to confirm that the person requesting revocation is the subscriber or an agent of the subscriber who is authorized to make the request;

(b) Upon receiving a certified copy of the death certificate of the subscriber or confirming by other evidence that the subscriber is dead; or

(c) Upon receiving documents effecting the dissolution of the subscriber or confirming by other evidence that the subscriber has been dissolved or otherwise ceases to exist, except that the certification authority is not required to revoke the certificate if he ascertains, before completing revocation of the certificate, that the dissolution has been rescinded or that the existence of the subscriber has otherwise been restored.

2. *An authorized certification authority may revoke a certificate he has issued if the certificate is or becomes unreliable, regardless of whether the subscriber consents to the revocation and notwithstanding any agreement to the contrary between the certification authority and subscriber.*

Sec. 79. *1. Immediately upon the suspension or revocation of a certificate pursuant to sections 2 to 100, inclusive, of this regulation, the authorized certification authority who issued the certificate shall, unless the notice is given pursuant to subsection 2, give notice of the suspension or revocation in such a manner as is specified in the certificate. If the certificate specifies that the notice must be given in one or more repositories, the certification authority shall publish a signed notice of the suspension or revocation:*

(a) In each of the specified repositories that will accept publication; and

(b) In a recognized repository if:

(1) Any of the specified repositories refuse to accept publication or have ceased to exist;

or

(2) None of the specified repositories is a recognized repository.

2. *The secretary of state will give notice of a suspension ordered pursuant to subsection 2 of section 76 of this regulation, in the manner provided in subsection 1, if the person requesting the suspension pays in advance any fee for publication required by each repository where the notice is to be published.*

Sec. 80. *1. A licensee who intends to discontinue providing services as a certification authority shall:*

(a) Before discontinuing those services, notify the subscribers identified in all valid certificates issued by the licensee;

(b) Take such commercially reasonable efforts as are necessary to minimize disruption to those subscribers and to persons who rely on those certificates; and

(c) Make reasonable arrangements for the preservation of his records relating to his services as a certification authority. If the licensee is unable to make other reasonable arrangements for the preservation of those records, the licensee shall:

(1) Revoke all valid certificates he has issued and return all of his records regarding those certificates to the appropriate subscribers; or

(2) Submit those records to such other licensees as the secretary of state designates for that purpose.

2. The secretary of state will not release a suitable guaranty filed by a licensee who discontinues providing services as a certification authority until the expiration of the term for which the guaranty was issued.

Sec. 81. *1. To recover a qualified right to payment from a suitable guaranty filed with the secretary of state pursuant to sections 2 to 100, inclusive, of this regulation, a claimant must submit to the secretary of state:*

(a) Within 3 years after the occurrence of the acts upon which the qualified right to payment is based, a signed notice of the claim that sets forth:

(1) The name and address of the claimant;

(2) The amount of the claim;

(3) The grounds for the qualified right to payment;

(4) The date of occurrence of the acts upon which the qualified right to payment is based;

and

(5) Any other relevant information required by the secretary of state; and

(b) A certified copy of the judgment upon which the qualified right to payment is based.

2. If the notice required pursuant to subsection 1 is filed before the entry of a judgment, the secretary of state will maintain the notice on file, without taking further action, until the claimant files the required copy of the judgment. If the secretary of state determines that the litigation identified in the notice has been resolved without a judgment, the secretary of state may expunge the notice from his records, except that the secretary of state will not expunge such a notice until at least 3 years after the date the notice was filed.

3. The secretary of state will not accept a notice submitted pursuant to subsection 1 that is submitted more than 3 years after the occurrence of the acts upon which the qualified right to payment is based.

4. Upon compliance of a claimant with subsection 1, the secretary of state will forward the notice and judgment to the surety company or financial institution that issued the suitable guaranty.

Sec. 82. *1. Except as otherwise provided in subsection 2, a claimant who complies with section 81 of this regulation may recover from a suitable guaranty:*

(a) If the guaranty is:

(1) A surety bond:

(I) The full amount of the qualified right to payment if notice of only one qualified right to payment is submitted during the term of the bond; or

(II) A pro rata share of the amount of the bond if notice of more than one qualified right to payment is submitted during the term of the bond; or

(2) A letter of credit, the amount allowed pursuant to the terms of the letter.

(b) In addition to the amount of the qualified right to payment, court costs and reasonable attorneys' fees incurred by the claimant to collect the claim.

(c) Successive claims for the enforcement of separate qualified rights to payment.

2. The total liability of a surety company or financial institution issuing a suitable guaranty must not, during the term of the guaranty, exceed the amount of the guaranty.

Sec. 83. *1. Except as otherwise provided by specific statute or regulation, a public agency shall not accept a digital signature as a substitute for a handwritten or facsimile signature unless the digital signature is verified by a valid certificate.*

2. Except as otherwise provided in subsection 3 or by a specific statute or regulation, a public agency shall not use a digital signature to conduct official business unless the digital signature is verifiable with reference to a public key set forth in a valid certificate that identifies the public agency as the subscriber.

3. Subsection 2 does not apply to the use of a digital signature for internal agency procedures unless otherwise required by a specific statute, regulation or court rule, or by the office of financial management, training and controls of the department of administration.

4. All information that identifies a private key held by a public agency is confidential.

5. As used in this section, "public agency" has the meaning ascribed to it in NRS 239.041.

Sec. 84. *1. The secretary of state will designate a repository as a recognized repository after he:*

(a) Receives:

(1) An application for such a designation submitted by a licensee;

(2) Such evidence as he deems sufficient to determine that the licensee and repository meet the requirements of sections 2 to 100, inclusive, of this regulation; and

(3) The applicable fee imposed pursuant to section 53 of this regulation; and

(b) Determines, if the repository will publish certificates that are not issued by recognized certification authorities, that the certification authorities issuing those certificates conform to legally binding requirements that the secretary of state determines to be substantially similar to or more stringent than the requirements of sections 2 to 100, inclusive, of this regulation.

2. The designation of a repository as a recognized repository is valid for 1 year unless the designation is earlier revoked or otherwise terminated.

3. The operator of a recognized repository may terminate its designation as such by filing a notice of termination with the secretary of state at least 30 days before the date of termination.

Sec. 85. *An application for designation as a recognized repository must be on a form prescribed by the secretary of state and include:*

- 1. The name of the licensee or applicant for a license who will operate the repository;*
- 2. The uniform business identifier number of the applicant, if any;*
- 3. The mailing address and, if different, the physical address of the applicant;*
- 4. The telephone number of the applicant;*
- 5. The electronic mail address of the applicant;*
- 6. The electronic mail address of the repository; and*
- 7. A description of the computer hardware, software and data base of the repository that demonstrates compliance with the requirements of sections 2 to 100, inclusive, of this regulation.*

Sec. 86. *A recognized repository:*

- 1. Must be operated by a licensee;*
- 2. Must operate by means of a trustworthy system that:*

(a) Provides on-line access to the repository on a continuous basis, except for such periods as are reasonably required for scheduled maintenance;

(b) Has the capacity to process transactions in a reasonably adequate manner for the anticipated volume of transactions; and

(c) Provides for the periodic reproduction and secure storage of data, in accordance with NRS 239.051, in a location other than the location of the principal system of the repository;

3. Must include a data base that contains:

(a) Certificates that are published in the repository;

(b) Notices of suspended or revoked certificates that are published by recognized certification authorities;

(c) An archive of certificates that have expired or been suspended or revoked within not less than the previous 3 years;

(d) Disclosure records;

(e) All orders and advisory statements published by the secretary of state regarding licensees; and

(f) Any other information required by the secretary of state; and

4. Must not contain a significant amount of information that is known or reasonably likely to be untrue, inaccurate or unreliable.

Sec. 87. 1. *The designation of a repository as a recognized repository shall be deemed revoked immediately upon the expiration or revocation of the license of the licensee who operates the repository.*

2. The secretary of state may, in accordance with subsection 3 and without revoking the license of the licensee who operates a recognized repository, revoke the designation of the

repository as a recognized repository if the secretary of state determines that the licensee or repository is not in compliance with all the provisions of sections 2 to 100, inclusive, of this regulation.

3. The secretary of state will inform a licensee who operates a recognized repository of his determination to revoke that designation by mailing a written notice to the mailing address and electronic mail address of the licensee specified on the application for the designation of the repository as a recognized repository. The notice must state the date when the revocation becomes effective, which must not occur until at least 30 days after the mailing of the notice. If the licensee files an application for a hearing on the matter before the effective date specified in the notice, the revocation does not become effective until so ordered by the hearing officer.

Sec. 88. *If a repository of a licensee ceases to operate as a recognized repository, the licensee shall publish the information maintained in the repository in another recognized repository. If no other recognized repository is available or willing to publish that information, the licensee shall publish the information in the state repository.*

Sec. 89. *1. The secretary of state will operate or contract for the operation of a state repository. If the secretary of state contracts for the operation of the repository by an entity other than the department of information technology, the contractor must be a licensee and agree to operate the repository in compliance with the provisions of sections 2 to 100, inclusive, of this regulation. The secretary of state may rescind a contract for the operation of the state repository for:*

(a) Any ground that would be sufficient for the revocation of the designation of the repository as a recognized repository; or

(b) Any other legally recognized ground for rescission.

2. *The state repository must include:*

(a) A disclosure record for each licensee;

(b) A list of all judgments filed with the secretary of state pursuant to section 81 of this regulation within the past 5 years;

(c) Each advisory statement published by the secretary of state regarding a licensee, together with any protest of the advisory statement filed by the licensee and the decision of the secretary of state regarding the protest;

(d) Any information required to be published in the state repository pursuant to sections 2 to 100, inclusive, of this regulation; and

(e) Any other information the secretary of state deems appropriate for inclusion in the state repository.

Sec. 90. *1. Except as otherwise provided in this section, a licensee who operates a recognized repository shall agree to pay for any loss incurred by a person who reasonably relies on a digital signature that is verified by the public key set forth in a suspended or revoked certificate, if the reliance occurs:*

(a) More than 1 business day after the licensee receives from a recognized certification authority a request to publish notice of the suspension or revocation; and

(b) Before the licensee has published the notice in the recognized repository it operates.

2. Subsection 1 does not require a licensee to agree to pay any:

(a) Punitive or exemplary damages or damages for pain or suffering; or

(b) Amount in excess of any limitations on obligations, losses or damages listed in the suspended or revoked certificate.

3. *A licensee may liquidate, limit, alter or exclude liability for consequential or incidental damages resulting from the requirements of subsection 1 by:*

(a) Agreement with the person who incurs the loss; or

(b) Notification of the person who incurs the loss, before he relies on the digital signature, of the liquidation, limitation, alteration or exclusion,

if the liquidation, limitation, alteration or exclusion is not unconscionable.

Sec. 91. *1. Except as otherwise provided in sections 2 to 100, inclusive, of this regulation, the provisions of sections 2 to 100, inclusive, of this regulation must be carried out in accordance with the provisions of chapter 233B of NRS.*

2. A person affected by a determination or action of the secretary of state made pursuant to sections 2 to 100, inclusive, of this regulation may obtain an administrative hearing on the matter before a hearing officer by submitting an application for such a hearing to the secretary of state. The application:

(a) May be submitted on a form provided by the secretary of state, or on another document or in an electronic writing signed by the applicant or his representative; and

(b) Must specify each issue to be considered at the hearing.

Sec. 92. *No person may appear in a representative capacity in an administrative hearing conducted pursuant to sections 2 to 100, inclusive, of this regulation except:*

1. An attorney who is admitted to practice law in this state.

2. An authorized officer, manager, partner or full-time employee of an organization or governmental entity who appears on behalf of the organization or governmental entity.

3. A natural person who represents himself.

4. An interpreter for a person who:

- (a) Speaks a language other than English and does not know the English language; or*
- (b) Is a handicapped person, as that term is defined in NRS 50.050.*

5. Such other persons as the hearing officer allows, based upon his determination that it would be unduly burdensome to require a person to use one of the representatives identified in subsections 1 and 2.

Sec. 93. *1. For the purposes of an administrative hearing conducted pursuant to sections 2 to 100, inclusive, of this regulation, there is a rebuttable presumption that:*

(a) A certificate that has been digitally signed by a licensee and published in a recognized repository or otherwise made available by the licensee or the subscriber identified in the certificate has been issued by that licensee and accepted by that subscriber.

(b) The information set forth in a valid certificate and confirmed by the certification authority who issued the certificate is accurate.

(c) If a digital signature is verified by the public key set forth in a valid certificate:

(1) The digital signature is the digital signature of the subscriber identified in that certificate;

(2) The digital signature was created by that subscriber with the intention of signing the message;

(3) The message associated with the digital signature has not been altered since the signature was created; and

(4) The recipient of that digital signature has no notice or knowledge that the signer:

(I) Has breached any term of an agreement entered into pursuant to section 65 of this regulation; or

(II) Does not rightfully hold the private key used to create the digital signature.

(d) A digital signature was created before it was time stamped by a disinterested person using a trustworthy system.

2. As used in this section, "recipient" means a person who:

(a) Has received a certificate and a digital signature that is verifiable with reference to the public key set forth in the certificate; and

(b) Is in a position to rely on the digital signature.

Sec. 94. *In an administrative hearing conducted pursuant to sections 2 to 100, inclusive, of this regulation:*

1. A party to the hearing may, unless the hearing officer directs otherwise, file any pleading or other document in electronic form.

2. If a pleading or other document that is filed electronically must be signed, it must be signed with a digital signature that is verifiable by a valid certificate issued by a certification authority who is not a party to the hearing.

3. The service of a pleading or other document by electronic transmission shall be deemed effective upon receipt, except that such an electronic transmission which is sent after 5:00 p.m. on a business day or at any time on a weekend or state holiday shall be deemed effective at 8:00 a.m. on the next business day.

Sec. 95. *1. A hearing officer may use a summary procedure to conduct an administrative hearing regarding:*

(a) Any matter arising pursuant to sections 2 to 100, inclusive, of this regulation, except as otherwise required by the provisions of a specific statute or sections 2 to 100, inclusive, of this regulation, if the secretary of state determines that the interests of the public do not require the provision of notice of the hearing and an opportunity for participation in the hearing by any

persons other than the parties to the hearing, and the issues and interests involved do not warrant the use of another procedure.

(b) The suspension of a certificate by order of the secretary of state pursuant to section 75 or 76 of this regulation. Except as otherwise provided in subsection 2, if any person affected by such a suspension submits an application for an administrative hearing on the matter, the hearing officer shall immediately provide, by such means as he reasonably calculates will most rapidly inform the recipient of the hearing, notice of the hearing to the person who submitted the application, the subscriber identified in the certificate, the certification authority who issued the certificate and any other affected person who has requested notice of the hearing.

2. Subsection 1 does not require the use of a summary procedure to review the suspension of a certificate by order of the secretary of state if a hearing officer determines, at his discretion, to use another procedure at the request of a person who is affected by the suspension.

3. If a hearing officer issues a final determination that the suspension of a certificate by order of the secretary of state was erroneous, the certificate shall be deemed valid retroactively to the time of the suspension.

Sec. 96. *1. If the secretary of state suspends a license pursuant to subsection 2 of section 50 of this regulation, the licensee may file with the secretary of state a petition to stay the suspension. A hearing officer shall use a summary procedure to conduct an administrative hearing on the matter within 7 days after the petition is filed.*

2. A hearing conducted pursuant to this section must be limited to a consideration of whether:

(a) The stay should be granted; or

(b) The terms of the suspension should be modified to allow the licensee to conduct limited activities pursuant to the license.

3. At a hearing conducted pursuant to this section:

(a) The record for the hearing must include the information upon which the suspension is based and may include any information obtained by the secretary of state after the date of the suspension.

(b) The licensee has the burden of demonstrating by a preponderance of the evidence that:

(1) The licensee is likely to prevail on the merits in proceedings for the revocation of the license;

(2) Without relief, the licensee will suffer irreparable harm; and

(3) Either:

(I) The risk of loss to any person is not sufficiently serious to justify continuation of the suspension; or

(II) Modification of the terms of the suspension will adequately protect the interests of each affected person.

4. The hearing officer shall enter and serve upon the parties to a hearing conducted pursuant to this section an order granting or denying the stay. The order becomes effective immediately upon service or at such other time as is specified in the order.

Sec. 97. 1. *The secretary of state may review the order of a hearing officer entered pursuant to section 96 of this regulation upon:*

(a) His own motion served upon the licensee within 21 days after service of the order; or

(b) A written petition by the licensee that is received by the secretary of state within 21 days after service of the order.

2. *If the secretary of state:*

(a) Does not serve a motion or receive a petition pursuant to subsection 1 within the required period, the order of the hearing officer shall be deemed a final order for the purposes of judicial review.

(b) Serves a motion or receives a petition pursuant to subsection 1 within the required period, he shall review the order promptly. The review must be limited to a consideration of the record of the hearing. The secretary of state will enter and serve upon the licensee his order regarding the review. The order:

(1) Becomes effective immediately upon service or at such other time as is specified in the order; and

(2) Shall be deemed a final order for the purposes of judicial review.

3. *The entry of an order that is deemed a final order pursuant to this section does not affect any subsequent administrative proceedings for the suspension or revocation of a license.*

Sec. 98. 1. A licensee shall:

(a) Create and retain such records as are necessary for the licensee to demonstrate compliance with sections 2 to 100, inclusive, of this regulation.

(b) Retain each notice of the suspension or revocation of a certificate given by the licensee pursuant to section 79 of this regulation.

(c) Create and retain a data base that contains a record of the identity of each subscriber named in a certificate issued by the licensee, which must include the number and date of issuance of the certificate and each fact represented in the certificate.

(d) Create and retain a data base that contains a record of each time stamp the licensee appends or attaches to a message, digital signature or certificate, which must include sufficient information to identify the relevant subscriber and message, digital signature or certificate.

2. The records required pursuant to:

(a) Paragraphs (a) and (b) of subsection 1 must be retained for not less than 5 years.

(b) Paragraph (c) of subsection 1 must be retained for not less than 10 years after the date the certificate expires or is revoked.

(c) Paragraph (d) of subsection 1 must be retained for not less than 10 years after the date the time stamp is appended or attached.

3. The records required pursuant to subsection 1 must be:

(a) Retained in the form of paper-based documents, retrievable computer-based documents or any form authorized by the state library and archives administrator pursuant to NRS 378.255 or 378.280 for the retention of records; and

(b) Indexed, stored, preserved and reproduced in such a manner as to remain accurate, complete and accessible to an auditor.

4. This section does not require the inclusion of any of the extensions of data specified in section 4.2 of the technical standards designated as X.509, version 3, as adopted by reference pursuant to section 46 of this regulation, in any record that is publicly accessible.

Sec. 99. *1. Except as otherwise provided in subsection 2 or required by court order, any:*

(a) Trade secret, as that term is defined in NRS 600A.030; or

(b) Information regarding the design, security or programming of a computer system used for the licensing or operation of a certification authority or repository pursuant to sections 2 to 100, inclusive, of this regulation,

which is in the possession of the secretary of state or department of information technology for the purposes of sections 2 to 100, inclusive, of this regulation, or an auditor conducting an audit pursuant to section 57 of this regulation, shall be deemed confidential and must not be made available for public disclosure, inspection or copying.

2. For the purposes of an audit conducted pursuant to section 57 of this regulation, a licensee shall provide the auditor with any information in his possession that is relevant to the audit, including any information that is deemed confidential pursuant to subsection 1.

Sec. 100. *1. The secretary of state may:*

(a) Investigate any activities of a licensee that are material to the compliance of the licensee with the provisions of sections 2 to 100, inclusive, of this regulation.

(b) Issue such orders to a licensee as the secretary of state deems necessary to assist him in conducting an investigation pursuant to paragraph (a) and to ensure compliance with the provisions of sections 2 to 100, inclusive, of this regulation. A licensee shall comply with any order issued by the secretary of state pursuant to this paragraph.

(c) Take such other action as he deems necessary to compel compliance with and enforce the provisions of sections 2 to 100, inclusive, of this regulation.

2. The provisions of sections 2 to 100, inclusive, of this regulation must not be construed to prohibit any other remedies for noncompliance with any of those provisions.

**INFORMATIONAL STATEMENT FOR ADOPTED
TEMPORARY REGULATION OF THE SECRETARY OF STATE**

The following statement is submitted for adopted amendments to Nevada Administrative Code chapter 239.

1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.

Four workshops and an adoption hearing were held. Notices of the workshops and the hearing were sent to all state agencies, county and city managers, and various business entities.

Summaries of public response are attached and may also be obtained from Bill Reinhard at the Secretary of State's office.

2. The number of persons who:

(a) Attended each hearing:	September 24, 1998	50
	September 25, 1998	25
	November 16, 1998	19
	November 17, 1998	14
	January 28, 1999	25
(b) Testified at each hearing:	September 24, 1998	06
	September 25, 1998	02
	November 16, 1998	05
	November 17, 1998	03
	January 28, 1999	03
(c) Submitted to the agency written comments:		03

3. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.

See question 1.

4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

The regulation was changed pursuant to testimony.

5. The estimated economic effect of the adopted regulation on the business which it is to regulate and on the public. These must be stated separately, and each case must include:

(a) Both adverse and beneficial effects; and

(b) Both immediate and long-term effects.

(a) No business will be required to use an electronic symbol as a digital signature, so there is not adverse economic effect on businesses.

Businesses that choose to use electronic symbols as digital signatures will be able to participate in electronic commerce and therefore would enjoy a beneficial effect.

(b) As electronic commerce continues to expand, businesses that choose to use electronic symbols as digital signatures will experience both immediate and long term effects.

6. The estimated cost to the agency for enforcement of the proposed regulation.

It is estimated that two additional staff will be required to administer this regulation at a cost of \$100,000 annually.

7. A description of any regulations of the state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

This regulation does not overlap or duplicate any state or local regulation.

8. If the regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of those provisions.

The regulation is not more stringent than federal regulation.

9. If the regulation establishes a new fee or increases an existing fee, a statement indicating the total annual amount the agency expects to collect and the manner in which the money will be used.

The regulation establishes a new fee for licensing certification authorities and repositories. The Secretary of State is unable to estimate the annual amount he will collect because that will depend on how many certification authorities and repositories choose to be licensed in Nevada. The money will go into the state treasury.