

Notice of Proposed Rulemaking

Title 2. Administration

Division 7. Secretary of State

Chapter 9. Business Programs

Amending Section 21903, Title 2 California Code of Regulations (Special Handling Fees)

Adding Section 21903.5, Title 2 California Code of Regulations (Copy Fees)

Date: March 11, 2011

To: All Interested Parties

From: Secretary of State

Subject: Notice of proposed Amendment to California Code of Regulations Title 2, Section 21903 and Adding Section 21903.5

Authority

Under authority established in Government Code section 12182, the Secretary of State proposes to amend section 21903 and add section 21903.5 to Title 2 of the California Code of Regulations. The proposed amendment and addition are related to special handling fees and copy fees.

Reference

The regulations implement, interpret and/or make specific Government Code section 12182.

Informative Digest and Policy Statement Overview

The proposed amendment moves established copy fees from an existing regulation to a separate new regulation solely related to copy fees and ensures no fee will be charged for issuing an electronic copy of a Statement of Information to the filer as part of an online filing transaction. Statements of Information are the documents listing directors, officers, managers and other contact information for businesses that are filed annually or biennially by corporations and limited liability companies.

Currently, Section 21903 of the California Code of Regulations sets special handling fees for processing documents, including specified copy fees. Amending Section 21903 will remove the existing copy fees in Section 21903 (c) (11), and a new separate section specific to copy fees for documents on file pursuant to Government Code section 12182 will be created. Also, this amendment clarifies and standardizes terms used within the section.

The Secretary of State proposes to add Section 21903.5 to highlight applicable copy fees for documents on file pursuant to Government Code section 12182 and to clarify a filer receiving an uncertified electronic copy at the time of filing a Statement of Information with the Secretary of State online will not be charged for receiving that electronic copy. This will provide an incentive to use the automated online filing service provided by the Secretary of State, which will make this public information available to the public faster and through a more economical process than through manual filings.

Written Public Comment Period

The written public comment period will close April 29, 2011. Any person may submit comments about the proposed regulations. To be considered, the appropriate person identified below must receive written comments before the close of the written public comment period.

Written comments may be submitted to:

Anika Van Eaton
Secretary of State
Business Programs Division
1500 11th St.
Sacramento, CA 95814

Or to: anika.vaneaton@sos.ca.gov

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 person listed above 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 Secretary of State, at its own motion, or at the instance of any interested person, may adopt the proposal substantially as set forth without further notice.

Availability of Proposed Text and Statement of Reasons

Copies of the proposed action, express terms, the Initial Statement of Reasons, and all of the information upon which the proposal is based are available for review upon request to Anika Van Eaton. The rulemaking file is available for review during normal business hours at 1500 11th St., Third Floor, Sacramento, CA 95814. Additional information or questions regarding the substance of the proposed action should be directed to Anika Van Eaton, as specified above.

Accessing Information Regarding This Rulemaking File on the Secretary of State Website

The text of the proposed amendments, the Notice of Proposed Amendment of Regulations and Statement of Reasons can be viewed at www.sos.ca.gov/admin/regulations/proposed-regs.htm.

Availability of Changes to Proposed Text

If any substantial and sufficiently related changes are made to the text as a result of comments received during the public comment period, the Secretary of State will make the full text of the changed regulations available for at least 15 more days before the date the regulations are permanently amended.

Fiscal Impact

There is no cost to any local agency or school district requiring reimbursement pursuant to 17500 et seq. There will be cost avoidance for the Secretary of State because once customers can immediately receive an electronic copy of their Statement of Information when they file online, more customers will use the website, resulting in less staff time, overtime and temporary help needed to process paper documents, as well as savings for ink/toner, postage and paper that otherwise would be used for providing copies. There will be no non-discretionary cost or

savings imposed upon local agencies. There are no costs or savings in federal funding to the state.

Significant Statewide Adverse Impact Directly Affecting Business, Including Ability to Compete

This proposal will not adversely impact business, including the ability to compete.

Impact on Jobs/Businesses

The proposed regulation will have no impact on jobs. The proposed regulatory action will benefit businesses by increasing the availability of current public information related to corporations and limited liability companies, while providing the speed and convenience of filing online and providing a free courtesy copy of the filed document to corporations and limited liability companies.

Cost Impacts on Representative Person or Business

The Secretary of State is not aware of any cost impacts. Rather, there will be savings to business owners because they will have an online filing option that provides them with a free electronic copy of their filing. Business owners will have the option to save the electronic image on their computers for their records. If business owners decide to print the electronic copy of their Statement of Information they receive after filing online, there will be the minor cost associated with printing the document with their own printers. However, the increased convenience of filing online and the increased timeliness of immediately receiving the electronic copy will be more important than the minor cost of printing the document.

Impact on Small Businesses

The proposed regulatory action will benefit small businesses by increasing the availability of current public information, providing the speed and convenience of filing online and allowing corporations and limited liability companies to receive an electronic copy of their filed Statements of Information without a fee when filing online. Currently, only certain corporations are allowed to file their Statements of Information online, but cannot receive a copy of the filed document online at the time of filing because the Secretary of State's website does not have the capability to provide such copies. Limited liability companies and all other corporations must submit paper filings and submit a separate mail or in-person request for copies with applicable fees through a separate process.

Local Mandate

The proposed regulations create no local mandate.

Alternatives Statement

The alternative is to charge a separate fee for providing a customer who uses the online filing service with an uncertified electronic copy of their filing. However, it is difficult to estimate the cost of providing the electronic copy, so it would be difficult to decide on an appropriate fee to charge. Also, charging for an electronic copy might be a disincentive for someone to use the online filing service, while providing an electronic copy for free might be an incentive to use the service. Saving time, money, paper and ink with the online filing far outweigh any potential benefit of charging a minimal fee.

Final Statement of Reasons

It is anticipated that the proposed regulations will be filed with the Office of Administrative Law and shall include a Final Statement of Reasons for the amendments. Copies of the Final Statement of Reasons may be obtained from the listed contact person when it becomes available.