

Initial Statement of Reasons

Title 2. Administration
Division 7. Secretary of State
Chapter 8.5. Business Entity Names

Amending Section 21005

Title 2. Administration
Division 7. Secretary of State
Chapter 9. Business Programs

Amending Sections 21903, 21904, 21905
Adopting Section 21902.5
Repealing Section 21905.5

Title 2. Administration
Division 7. Secretary of State
Chapter 13. Uniform Commercial Code
Article 5. Information Request and Search Response

Amending Section 22601.5

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

Written Public Comment Period: December 31, 2021, through February 14, 2022.

Specific Purpose of the Amendments

The California Business Connect (CBC) is an information technology project that automates paper-based processes allowing businesses to file and request copies of records online, 24 hours a day, 7 days a week, making it easier to do business in California. It provides access to Secretary of State business records allowing the public and government agencies to perform functions in a more efficient manner and allows fee payments to be processed within one business day. The CBC project affects nearly every Business Programs Division (BPD) process, including most of the business filings for corporations, limited liability companies, limited partnerships, and other statutorily required trademark and Uniform Commercial Code filings. The processes will be almost entirely paperless, with

many of the filings and requests for information completely automated through online services.

The CBC project is anticipated to “Go-Live” on March 31, 2022. During the third quarter of 2020, the CBC project conducted a soft launch of a special virtual counter called “eForms Online” and has had over 100,000 online submissions in 9 months. There have been nearly 5 million online submissions since 2017 for services including Statements of Information, business formations and UCC filings. The purpose of the proposed amendments is to reflect the Secretary of State’s goal of transitioning from several paper driven filing processes to online filing functionalities. These amendments allow the public to submit business documents online which are then reviewed by the Secretary of State’s staff in a more timely and efficient manner. The public may now electronically sign documents submitted online which reduces the need of printing and scanning. Expedited services are now enhanced for online filings as the processes will be streamlined for quicker reviews. As customers have control over when they want to submit a document and when they want a document to be precleared before filing, the filing dates will now be in the control of the customer.

Other proposed amendments also clarifies when a document is being reviewed for a name availability to clear any ambiguities to customers as to when the final determination is made for the availability of the proposed name. As business filings are transitioning towards the more efficient online processes, the time between a name reservation and the submitted document for review will be shorter and the proposed amendment clarifies that a final determination for the name availability is made when the document is submitted for review rather than when the name reservation was made. The amendment would reduce confusion and possible rejections and document returns.

The additional amendments would also eliminate outdated services that are no longer offered as more and more documents are being made available online for customers to view or request through a self-service method. Copy fees and service fees are also revised to reflect the most current available services. Amendments would also remove any redundant and excess fees as the increase in online filings will create a larger electronic database for customers to request copies more efficiently. The amendment to revise the requirement for UCC search requests to “city and state” would also assist the public and the Secretary of State to process search requests at a more efficient manner and to reduce the search turnaround times.

All these proposed amendments would further the goal to make it easier to do business in California and transition from antiquated processes to more modern procedures.

Specifically,

- 1) Subsection 21005(b) adds the phrase “has been reviewed by” and deletes the phrase “for filing” from the end of the sentence.
- 2) Section 21902.5 adopts definitions regarding electronic signatures.
- 3) Subsection 21903(c)(3) adds the term “requests” and replaces the word “certificate” to “name.”
- 4) Subsection 21903(c)(7) removes the phrase “and certificates of incumbency.”
- 5) Subsection 21903(c)(8) is deleted entirely.
- 6) Subsection 21903(c)(9) is deleted entirely.
- 7) Subsection 21903(c)(10) is deleted entirely.
- 8) Subsection 21903(d) deletes the phrase “certificates, or requests for certified or uncertified copies as to the same debtor, corporation or other business entity, or for.”
- 9) Subsection 21904(a)(6) adds the phrase “within the last 6 months” and the phrase “Any change to the entity record invalidates the precleared document.”
- 10) Subsection 21904(c)(1) deletes the phrase “or submit electronically through the Secretary of State’s designated website” for preclearance documents.
- 11) Subsection 21904(c)(1)(C) is deleted entirely.
- 12) Subsection 21904(c)(1)(D) adds the phrase “Requisite Secretary of State prescribed cover sheet including a” and is renumbered to Subsection Section 21904(c)(1)(C) as the existing Section 21904(c)(1)(C) is being deleted.
- 13) Subsection 21904(c)(1)(E) is renumbered to Subsection Section 21904(c)(1)(D) as the existing Section 21904(c)(1)(D) is being renumbered.
- 14) Subsection 21904(c)(6) adds the phrase “for a 4 hour expedite.”
- 15) Subsection 21904(c)(7) is deleted entirely.
- 16) Subsection 21904(c)(7)(A) deletes the phrase “Class I service: a” and is renumbered to Subsection 21904(c)(7).
- 17) Subsection 21904(c)(7)(B) is deleted entirely.

- 18) Subsection 21904(c)(7)(C) is deleted entirely.
- 19) Subsection 21904(c)(7)(D) is deleted entirely.
- 20) Subsection 21904(c)(8) deletes the fees for the three other classes of services which are “for Class I service; (B) \$400 for Class II service; (C) \$300 for Class III service; and (D) \$250 for Class IV service.”
- 21) Subsection 21904(c)(9) replaces the reference to Subsection (D) to Subsection (C) as Subsection 21904(c)(1)(D) is being renumbered to Subsection 21904(c)(1)(C).
- 22) Subsection 21904(c)(9)(B) is deleted entirely.
- 23) Subsection 21904(c)(9)(C) is being renumbered to 21904(c)(9)(B) as the existing Section 21904(c)(9)(B) is being deleted.
- 24) Subsection 21904(c)(9)(D) is being renumbered to 21904(c)(9)(C) as the existing Section 21904(c)(9)(C) is being renumbered.
- 25) Subsection 21904(c)(9)(E) is being renumbered to 21904(c)(9)(D) as the existing Section 21904(c)(9)(D) is being renumbered.
- 26) Subsection 21904(c)(10) is deleted entirely.
- 27) Subsection 21904(c)(11) is deleted entirely.
- 28) Subsection 21904(d)(2)(B) replaces the phrase “Two copies of the document” with “The preclearance approval number.”
- 29) Subsection 21904(d)(2)(C) replaces the phrase “Copy of the preclearance response” with “The precleared document is required if submitting for a 4 hours expedite.”
- 30) Subsection 21904(d)(3) adds the term “completed.”
- 31) Subsection 21905(c)(1)(B) is deleted entirely.
- 32) Subsection 21905(c)(1)(C) is being renumbered to 21905(c)(1)(B) as the existing 21905(c)(1)(B) is being deleted.
- 33) Subsection 21905(c)(1)(D) is being renumbered to 21905(c)(1)(C) as the existing 21905(c)(1)(C) is being renumbered and adds the phrase “personally delivered” and “must be on a Secretary of State prescribed cover sheet.”

34) Subsection 21905(c)(1)(E) is being renumbered to 21905(c)(1)(D) as the existing 21905(c)(1)(D) is being renumbered.

35) Subsection 21905(c)(1)(F) is being renumbered to 21905(c)(1)(E) as the existing 21905(c)(1)(E) is being renumbered.

36) Subsection 21905(c)(1)(G) is being renumbered to 21905(c)(1)(F) as the existing 21905(c)(1)(F) is being renumbered.

37) Subsection 21905(c)(1)(H) is being renumbered to 21905(c)(1)(G) as the existing 21905(c)(1)(G) is being renumbered.

38) Subsection 21905(e)(1) adds the phrase “the eligible document was personally delivered to the Secretary of State.”

39) Subsection 21905(i) replaces the reference to Subsection (F) to Subsection (E) as Subsection 21905(c)(1)(F) is being renumbered to Subsection 21905(c)(1)(E).

40) Section 21905.5 is deleted entirely.

41) Subsection 22601.5 replaces the term “address” with “city and state.”

Necessity for the Amendments

The California Business Connect projects makes it easier to do business in California by streamlining the online processes for submitting documents. Existing regulations must be amended to clarify any ambiguities regarding fees and the process and timeframe for paper and online filings with expedited or preclearance services, as CBC is anticipated to “Go-Live” on March 31, 2022.

Specifically,

1) The changes to Subsection 21005(b) are required as it updates the ambiguity of when a final determination of a proposed name is made when there has been a name reservation. The phrase “has been reviewed by” will make clear that a final determination is made during the time the document submitted is being reviewed by the SOS for filing and not the time when the document is submitted for filing or when the name reservation was made.

2) The adoption of Section 21902.5 allows customers to sign documents submitted online to the SOS electronically to make it easier for customers to execute documents without needing to scan wet signatures.

- 3) The changes to Subsection 21903(c)(3) are required as it adds the term “requests” and replaces the word “certificate” to “name.” This would clarify the ambiguity that name reservations fees are also processing fees, consistent with all other handling fees charged, and is charged per name request for a name reservation, rather than the actual name reservation certificate.
- 4) The changes to Subsection 21903(c)(7) are required as it removes the phrase “and certificates of incumbency.” This would remove an outdated term that is no longer used.
- 5) The deletion of Subsection 21903(c)(8) is required as it removes a method of transmission that is no longer provided.
- 6) The deletion of Subsection 21903(c)(9) is required as it removes a method of requests that is no longer provided.
- 7) The deletion of Subsection 21903(c)(10) is required as it removes a method of requests that is no longer provided.
- 8) The changes to Subsection 21903(d) are required as it deletes the phrase “certificates, or requests for certified or uncertified copies as to the same debtor, corporation or other business entity, or for” to clear any ambiguities and simplify the copying fees in this section.
- 9) The changes to Subsection 21904(a)(6) are required to add the phrase “within the last 6 months” and the phrase “Any change to the entity record invalidates the precleared document” to add a date limit and make clear any changes to the entity record would invalidate the precleared document to prevent precleared documents from being returned when an entity’s record has changed from when the preclearance was approved and when it has been submitted for filing.
- 10) The changes to Subsection 21904(c)(1) are required as it deletes the phrase “or submit electronically through the Secretary of State’s designated website” for preclearance documents to permit only preclearance paper filings to allow Secretary of Staff to determine, in writing, a precleared document conforms to law to ensure no delays from any online submissions.
- 11) The deletion of Subsection 21904(c)(1)(C) is required as different classes of preclearance service are no longer offered.
- 12) The changes to Subsection 21904(c)(1)(D) are required as it adds “Requisite Secretary of State prescribed cover sheet including a” to ensure all preclearance requests are made on a uniform cover sheet with all the required information and the renumbering is required as the existing Section 21904(c)(1)(C) is being deleted.

- 13) The changes to Subsection 21904(c)(1)(E) are required as the existing Section 21904(c)(1)(D) is being renumbered.
- 14) The changes to Subsection 21904(c)(6) are required to add the phrase “for a 4 hour expedite” as 4 hour expedites are more time sensitive and the preclearance response would accelerate the review process to ensure the document is reviewed before the 4 hour deadline.
- 15) The changes to Subsection 21904(c)(7) are required as it deletes the phrase “The classes of preclearance service for an eligible document submitted pursuant to subsection (C) of paragraph (1) of subdivision (c) are the following:” as the four classes of service is revised to only one service, a 24-hour response. 72-hour, 5 business day and 10 business day, services will no longer be offered.
- 16) The changes to Subsection 21904(c)(7)(A) are required as it deletes the phrase “Class I service: a” as the four classes of service is revised to only one service, a 24-hour response. 72-hour, 5 business day and 10 business day, services will no longer be offered and is renumbered to Subsection 21904(c)(7) as the additional subsections regarding the services are deleted.
- 17) The deletion of Subsection 21904(c)(7)(B) is required as the four classes of service is revised to only one service.
- 18) The deletion of Subsection 21904(c)(7)(C) is required as the four classes of service is revised to only one service.
- 19) The deletion of Subsection 21904(c)(7)(D) is required as the four classes of service is revised to only one service.
- 20) The changes to Subsection 21904(c)(8) are required as it deletes the fees for the three other classes of services as they are no longer offered.
- 21) The changes to Subsection 21904(c)(9) which replaces the reference to Subsection (D) to Subsection (C) as Subsection 21904(c)(1)(D) is being renumbered to Subsection 21904(c)(1)(C).
- 22) The deletion of Subsection 21904(c)(9)(B) is required as the telephone facsimile delivery will no longer be offered.
- 23) The changes to Subsection 21904(c)(9)(C) are required as the existing Section 21904(c)(9)(B) is being deleted.
- 24) The changes to Subsection 21904(c)(9)(D) are required as the existing Section 21904(c)(9)(C) is being renumbered.

- 25) The changes to Subsection 21904(c)(9)(E) are required as the existing Section 21904(c)(9)(D) is being renumbered.
- 26) The deletion of Subsection 21904(c)(10) is required as the four classes of service is revised to only one service. Online submissions are no longer offered.
- 27) The deletion of Subsection 21904(c)(11) is required as the four classes of service is revised to only one service. Online submissions are no longer offered.
- 28) The changes of Subsection 21904(d)(2)(B) are required as two copies of the document is no longer required. Only the preclearance approval number is required to save on excess paper.
- 29) The changes to Subsection 21904(d)(2)(C) are required as it replaces the phrase “Copy of the preclearance response”, as it is no longer required, to “The preclearance document is required if submitting for a 4 hour expedite,” as 4 hour expedites are more time sensitive and the preclearance response would accelerate the review process to ensure the document is reviewed before the 4 hour deadline.
- 30) The changes to Subsection 21904(d)(3) are required as it adds the term “completed” to clarify any ambiguities as precleared document are not required to be completed but documents submitting for review are required to be completed.
- 31) The deletion of Subsection 21905(c)(1)(B) is required as two copies are no longer required to save on excess paper.
- 32) The changes to Subsection 21905(c)(1)(C) are required as 21905(c)(1)(B) is being deleted.
- 33) The changes to Subsection 21905(c)(1)(D) are required as the existing 21905(c)(1)(C) is being renumbered and adds the phrase “personally delivered” and “must be on a Secretary of State prescribed cover sheet” to ensure all requests for a 4 hour expedite are on a uniform form with all the required information.
- 34) The changes to Subsection 21905(c)(1)(E) are required as the existing 21905(c)(1)(D) is being renumbered.
- 35) The changes to Subsection 21905(c)(1)(F) are required as the existing 21905(c)(1)(E) is being renumbered.
- 36) The changes to Subsection 21905(c)(1)(G) are required as the existing 21905(c)(1)(F) is being renumbered.

37) The changes to Subsection 21905(c)(1)(H) are required as existing 21905(c)(1)(G) is being renumbered.

38) The changes to Subsection 21905(e)(1) is required as it adds the phrase “the eligible document was personally delivered to the Secretary of State” to require all 4 hour expedites are submitted personally rather than online due to the time sensitive nature of the service.

39) The changes to Subsection 21905(i) is required as it replaces the reference to Subsection (F) to Subsection (E) as Subsection 21905(c)(1)(F) is being renumbered to Subsection 21905(c)(1)(E).

40) The deletion of Section 21905.5 is required as requests for a specific filing date is no longer offered. The filing date will be consistent with statute for when the document is submitting for filing or if an applicable request for a future filing date is made.

41) The changes to Subsection 22601.5 are necessary as it replaces the term “address” with “city and state” to clear any ambiguities regarding the definition of address.

Technical, Theoretical, and/or Empirical Study, Reports, or Documents Relied Upon

The Secretary of State did not rely on any technical, theoretical or empirical studies or reports in proposing the amendment and adoption of these regulations.

However, the Economic Impact Analysis/Assessment (EIA) prepared pursuant to Government Code section 11346.3(b) is a document relied upon.

Business Impact

The Secretary of State is unaware of an adverse economic impact on businesses.

The implementation of the California Business Connect project would make it easier to conduct business in California as filings are more streamlined and efficient with the transition to automated and online filings. Amending the regulations will help persons and businesses submit documents for filing online with easier understandable fees and processing times. The amended regulations would also clarify any ambiguous fees for businesses.

Specific Technologies or Equipment

These regulations do not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific. The Secretary of State considered leaving the regulations as they are currently written. However, doing so would create confusion as the existing regulations are ambiguous regarding specific fees and processes for expedited and preclearance documents.