

Regulatory Analysis

TITLE 75 Secretary of State LSA Document #25-154 OMB #2025-01R

I. Description of Rule

This document represents additional analysis and clarification to a previous rulemaking action. With the exception of section headers, content in bold is new to this document. The un-bolded sections were reviewed in a previous rulemaking action.

With the advent of the Secretary of State's office "Business One Stop" and "INBiz" initiatives (circa 2011) the agency was charged with developing and maintaining a state of the art, highly automated on-line business registration hub, which other state agencies could easily interface with (i.e. DOR, IDWD, IPLA), that provided 24-7 self-service access to millions of imaged and digital business records administered by the agency. The agency's array of IT applications, which the public and other state agencies depend on, exists in a state of nearly constant revision and reinvention – to keep with the pace of IT evolution. The statutory framework for the agency's Business Services Division calls for its IT infrastructure to be entirely transaction funded from "enhanced access" transaction fees. The fee structure (contentiously developed by previous administrations) appears to have struck a reasonable balance between low filing and transaction fees (Indiana ranks among the 10% lowest in the nation for low-cost business registration costs) and costs of hosting, sustaining, and advancing the necessary IT infrastructure for the array of business services the agency is charged with providing.

In keeping with HEA 1623's directives and intent, the agency will be promulgating administrative rules for its transaction fee-based Trademark services.

In general, the Secretary of State, through the Business Services Division has the statutory power to administer the filing of Trademark registrations and certification services. Pursuant to the Indiana Trademark Act (IC 24-2) the Secretary of State administers trademark registrations and provides registered trademark searching and certification services.

Pursuant to:

IC 24-2-1-15.3 authorizes collection of trademarks filing fees (\$10).

IC 4-5-10-2 authorizes the Secretary of State establish and modify fees to provide electronic, expedited, and enhanced public and commercial access to information maintained by the Secretary of State (online trademark search and certification request (\$15).

IC 4-5-10-2 the agency collects \$500 fee for commercial account bulk trademark registration data upload subscription

IC 4-5-10-5 agency enhanced online access fees and commercial account bulk date upload subscription fees are deposited into the "Electronic and Enhanced Access Fund" a dedicated, non-reverting fund.

The purpose of the fees are the development, maintenance, and improvement of technology infrastructure to provide perpetual maintenance and 24-7 access to records and services.

No changes in trademark filing, search or certification fees are requested currently

Secretary of State Business Services Division “Enhanced Access” Trademark filing fees:

- | | |
|--|----------|
| 1) Online Trademark Search & certification | \$15.00 |
| 2) Online Bulk Data Upload subscription | \$500.00 |

IC 24-2-1-14 trademark filing fees – circa 2017. IC 4-5-10-5 fees to provide electronic, expedited, and enhanced access to records – circa 1997, amended in 2011 and 2019.

Fees for trademark registrations, searches and related transactions have not changed in the past 10 years. Costs for the IT infrastructure to administer trademark registrations and searches have increased significantly over the same period and far exceed transaction filing fee revenues.

Pursuant to IC 24-2-1-4, all trademark filings must be submitted electronically. Electronic applications must be paid for electronically with a credit card, debit card, or e-check. The Secretary of State’s office utilizes a State-approved payment processing vendor which charges a nominal payment processing fee. Payment processing fees are calculated as follows:

- 1. For any credit card transaction, the greater of either \$1.00 or 2.15% of the transaction total.**
- 2. For any debit card transaction, the greater of either \$1.00 or 1.50% of the transaction total.**
- 3. For any e-check transaction, the greater of either \$1.50 or 1.25% of the transaction total.**

Historically, these fees have been set by policy; HEA 1623-2023 requires that all fees be set by rule. The proposed rules accomplish that mandate. There are no new fees, fines or civil penalties proposed within these rules. **Payment processing fees specifically are set by the State-approved payment processing vendor integrated in INBiz.**

II. Fiscal Impact Analysis

The anticipated effective date of the rule is July 1, 2025. There is no anticipated fiscal impact on state or local government created by this rule, as the content of this rule is already being administered by the Division under the safe harbor provision of HEA 1623-2023 and has been in effect since at least 2017.

More generally the agency estimates the expenses associated with the collective duties and infrastructure at 5% of the total to meet the requirements of our Trademark filing and Searches responsibilities per the Indiana Trademark Act (IC 24-2)

For context the Business Service Division has 10 individuals, one director and one deputy director that are cross trained to handle the variety of transactions around Trademark filings. Those people, our vendor supported call center along with our INBiz portal provide a high level of service to all who need to interact with us. Trademark acceptance and renewal requires more human review since the nuances of differentiation must be established along with sufficient demonstration of use. This is what informed our 5% assessment of agency costs despite the low volume of filings. This document represents additional clarity of fees based on feedback from the Office of Management and Budget regarding a previous rulemaking action. These are not new fees. This report describes with additional clarity the fees incurred for electronic payment processing for Trademark transactions.

Note revenue and expenses below

Fiscal Year	Enhanced Access Revenues	Enhanced Access Fund Expenses (5%) of Agency's costs
FY 20	\$ 4,000	\$ 260,126
FY 21	\$ 7,006	\$ 213,574
FY 22	\$ 5,534	\$ 263,737
FY 23	\$ 5,503	\$ 336,138
FY 24 (8 months)	\$ 1,501	\$ 238,840
Total	\$ 23,544	\$ 1,312,415

Enhanced Access Fund revenues for Trademark related transactions administered by the Secretary of State Business Services Division: FY20 \$4,000; FY21 \$7,006; FY22 \$5,534; FY23 \$5,503; FY24 (8 months) \$1,501.

Payment processing fees paid on trademark transactions for the past 5 fiscal years: FY 20 \$1,500.00; FY 21 \$1863.50; FY 22 \$1,647.50; FY 23 \$1,518.00; FY 24 \$1,671.50.

Enhanced Access Fund expenses for administration of trademark registration filing and searches (estimated at 5% of the agency's Business One Stop/INBiz program costs): FY20 \$260,126; FY21 \$213,574; FY22 \$263,737; FY23 \$336,138; FY24 (8 months) \$238,840.

The rule changes do not change or increase fees as explained below but are added for clarity and per requirements of HEA-1623-2023.

III. Impacted Parties

Since both individuals and business entities can apply for trademarks and be granted one if:

- a. what they are attempting to trademark meets the requirements and
- b. they can demonstrate use of the mark in commerce

the impacted group is large, but the volume of actual trademarks applied and granted is small.

7-1-2019 through 5-31-24

Trademarks Applied	5412
Trademarks Granted	2781
Renewals Submitted	2096
Renewals Approved	1927

Since these rules are being promulgated in response to HEA-1623 all the above parties are currently in compliance so we will explain the impact of these fees based on the value of a trademark.

IV. Changes in Proposed Rule

The provisions of the proposed rules are an entirely new section. They are the promulgation of fees already permitted to be assessed by the Indiana Code. The following is a table of proposed rules which document existing fees and clarify existing requirements.

Item	% based fee	Minimum Fee	IC Authority	Proposed IAC	Purpose of proposed rule
Payment Processing Fees	2.15% of transaction total for credit 1.5% of transaction total for debit 1.25% of transaction total for e-check	\$1.00 for Credit or Debit \$1.50 for e-check	IC 24-2-1-11	75 IAC 9-3-3	Document existing payment processing fee, the greater of either the minimum fee or the % based fee.

V. Benefit Analysis

The primary benefit of a trademark is realized by the entity creating, filing and using the mark to help identify their company and brand. Registering and ensuring difference in a brand scope which can include trademarks is an important step to building awareness and loyalty for a business. The value is based on a combination of distinctiveness and the other marketing tools and business identifiers a business may choose to employ like web domain, business name, logos, and such. A business reputation for execution and value contributes to monetary value as well. Businesses that do this well and choose to have a trademark or trademarks will have goodwill value in the thousands to millions of dollars.

The secondary benefit is the ability to provide that brand distinctiveness to the public so they can make consumption decisions easier through those identifiers. Trademark registration and searches provide a business with a way to check to see if the brand instances they wish to trademark are different enough to give them distinguishability in the marketplace as well as an ability to demonstrate usage and ownership of a particular trademarked item. These are key elements to defending these assets in litigation if abuses occur.

Overall, this contributes to a healthy and productive part of commerce. Fees for trademark registrations, searches, and related transactions have not changed in the past 10 years. Costs for the IT infrastructure to administer trademark registrations and searches have increased significantly over the same period and far exceed transaction filing fee revenues.

VI. Cost Analysis

As established this administrative cost is reasonable when compared to other states in our region and allows Indiana to provide this Trademark service to business and the public in an efficient and effective way with reasonable access.

Comparison cost of Trademark registration (central states)

State	Cost of Registration
-------	----------------------

Illinois	\$ 10
Indiana	\$ 10
Kentucky	\$ 10
Michigan	\$ 50
Minnesota	\$ 70
Missouri	\$ 55
Ohio	\$ 125
Wisconsin	\$ 15

Fees for trademark registrations, searches, and related transactions have not changed in the past 10 years. Costs for the IT infrastructure to administer trademark registrations and searches have increased significantly over the same period and far exceed transaction filing fee revenues. Compared to states in similar geographic areas and costs of living our fees do not present a burden to someone wishing to create a trademark asset for their business.

VII. Sources of Information

- **Division Trademark Records**
- **Various SOS websites for each state referenced.**
- **Subject matter expert on “Branding BSD Director”**

VIII. Regulatory Analysis

The Division is proposing additional rules to codify its long-standing policy regarding fees since 2017 relating to IC 24-2-1-15.3, IC 4-5-10-2 and IC 4-5-10-5. The agency administers electronic trademark application, trademark search & certification, trademark renewal, and bulk data downloads of the same. Pursuant to IC 4-5-10-2 the agency collects fees for electronic, expedited, and enhanced public and commercial access to information maintained by the Secretary of State. These proposed rules contain no new fees.

A. Summary of Costs

The Division believes that the direct costs associated with these rules are contained herein. There are no costs to local government. There are no additional costs to state government because the Division already engages in the practice of these applications. The costs are well-described including comparatives to similar economic and geographical located states. The office and website allow for individuals and businesses to conduct all required activity online in a time-efficient manner.

B. Summary of Benefits

The benefits may not be easily quantified but they are supported by years of proven value that has been created by businesses applying for and utilizing Trademarks to enhance the marketability of their brands and companies.

Indiana SOS Business Service Division has struck a balance between:

- Providing an efficient and accessible way to apply and maintain your trademark in our business community.
- Providing public access to a database of trademarks for review and consideration.
- Maintaining a process and tool that may cost more than fee revenue but meets our statutory requirements.

IX. Contact Information of Staff to Answer Substantive Questions

Scott Willis
 Business Services Director
awillis@sos.in.gov
 317-775-1769

X. Redline Draft of Proposed Rules

Please provide a link or attachment to the proposed rule that includes a redline of the changes made by the proposed rule from existing regulations, or an alternative form of identifying changes approved in advance by OMB. This draft can include annotations with other sources of requirements as discussed in Section IV above.

XI. Resubmission Information (if applicable)

Pursuant to IC 4-22-2-22.8(e), if an agency revises a proposed rule after it has been approved by OMB and SBA, the agency must submit the revised proposed rule and a revised regulatory analysis for review. If applicable, this section should include (1) a list of the changes in the revised rule from the previously approved version, (2) an explanation for the reason(s) for the changes, and (3) a description of how those changes impact the regulatory analysis previously submitted.