

Regular Rulemaking Protocol

Department staff identifies the need for a new regulation¹ based on new legislation, court decisions or changes in interpretation of existing law which have general taxpayer impact. Next, Department staff drafts the proposed regulation and meets with industry/interested parties to identify and resolve issues regarding the proposed language if needed.

Once Department staff determines that the regulation is ready to be formally proposed, Department staff prepares an issue paper, which includes revenue and cost estimates, and sends the issue paper through a management approval process. The issue paper identifies items that staff and interested parties agree on as well as proposed alternatives over which the staff and the industry group may still have a dispute. Department management then decides whether to authorize publication of staff's proposed regulation with or without proposed alternatives. Department management may also give staff other directions, such as to conduct an interested parties meeting to further discuss the proposed regulation.

After Department management gives staff authorization to publish a proposed regulation, Department staff will prepare Department of Finance (DOF) form 399, *Economic and Fiscal Impact Statement*. The Regulations Coordinator will send the form to DOF for concurrence when the adoption of the regulation will result in local agency costs or savings, in state agency costs or savings, or in other nondiscretionary local or state revenue increases or decreases. After the Department receives any required DOF concurrence, the Regulations Coordinator submits the Notice of Proposed Regulatory Action for the proposed regulation to the Office of Administrative Law for publication in the California Regulatory Notice Register, mails the notice to interested parties, and distributes the Notice to Department staff. The Regulations Coordinator will also email a link to the notice to the interested parties on the Department's Listserv email list. To sign up to be added to the Listserv email list for notices to interested parties, please use the following link: <http://www.cdtfa.ca.gov/subscribe/aprc.aspx>.

Written Comment Period

The notice for a proposed regulation must be published in the California Regulatory Notice Register at least 45 days prior to any public hearing and the close of the public comment period.

Public Hearing

A public hearing will not be held regarding the adoption of a proposed regulation, unless the notice indicates that a public hearing has been scheduled or an interested party or interested party's representative requests a public hearing no later than 15 days prior to the close of the written comment period specified in the notice. Also, a public hearing will not be held sooner than 45 days after the date the Department's notice was published for the proposed regulation.

¹ The protocol for amending and repealing regulations is similar to the protocol for adopting new regulations.

If there is a public hearing, Department staff will begin the hearing by describing the proposed regulation. Then, Department staff will permit interested parties to make oral comments and submit written comments regarding the proposed regulation; staff may respond to the comments and answer any questions raised by the interested parties.

The Department may continue a public hearing by announcing the continuance at the scheduled public hearing or by posting a notice at the entrance to the room on the originally scheduled date. If a public hearing is continued, the Regulations Coordinator notifies the Office of Administrative Law and interested parties of the new public hearing date.

Adoption

The Department's authority to adopt, amend, and repeal regulations is vested in the Director, and the Director has the discretion to delegate that authority to other Department staff.

The Department must consider any written comments received before the close of the written comment period and any oral and written comments from the public hearing, if held, before the Department decides whether to adopt the proposed regulation.

If the Department adopts the proposed regulation, as published, or with only non-substantial or solely grammatical changes, the rulemaking file for the regulation is forwarded to the Office of Administrative Law for approval and filing with the Secretary of State.

If the Department decides to make changes to the proposed regulation that are sufficiently related to the original version that the public was adequately placed on notice that the change could result from the originally proposed regulatory action, then the full text of the regulation, with the changes clearly indicated, must be made available to the public for written comment at least 15 days before the agency adopts the proposed regulation with the changes. The Regulations Coordinator sends the changed version to all interested parties including those whom commented orally or in writing. If the Department adopts the proposed regulation with the changes after the close of the additional comment period, the Regulation Coordinator will submit the rulemaking file for the changed version of the proposed regulation to the Office of Administrative Law for approval and filing with the Secretary of State.

If the Department decides to make changes to the proposed regulation that are not sufficiently related, the Department must begin the entire rulemaking process again.

A Final Statement of Reasons must be included in the rulemaking file submitted to the Office of Administrative Law for approval. The Final Statement of Reasons must include a response to every timely public comment submitted either orally or in writing regarding the proposed regulation.

Office of Administrative Law

The Office of Administrative Law is charged with the review of regulations as provided in the Administrative Procedure Act (Government Code sections 11340 and following).

The Office of Administrative Law has 30 working days to review a proposed regulation adopted through the regular rulemaking process described above. If approved, the Office of Administrative Law files the regulation with the Secretary of State. If the regulation is disapproved, the Office of Administrative Law returns it to the Regulations Coordinator for amendment and resubmission within 120 days.

Effective Date

Beginning January 1, 2013, unless an exemption applies, Government Code section 11343.4 states the effective date of an approved regulation is determined by the date the regulation is filed with the Secretary of State as follows:

1. January 1 if the regulation or order of repeal is filed on September 1 to November 30, inclusive.
2. April 1 if the regulation or order of repeal is filed on December 1 to February 29, inclusive.
3. July 1 if the regulation or order of repeal is filed on March 1 to May 31, inclusive.
4. October 1 if the regulation or order of repeal is filed on June 1 to August 31, inclusive.

Exceptions to this rule are: (1) a regulation adopted pursuant to a statute requiring a specific effective date, which is effective on the date prescribed by the statute; (2) a regulation with a later Department-prescribed effective date, which is effective on the date specified by the Department; and (3) a regulation with an earlier effective date prescribed by the Office of Administrative Law based upon the Department's written request demonstrating good cause, which is effective on the date specified by the Office of Administrative Law.

Emergency Regulations

When the Legislature provides by statute or the Department makes a finding that the immediate adoption, amendment, or repeal of a regulation is necessary to address an emergency and avoid serious harm to the public peace, health, safety, or general welfare, the Department may adopt, amend or repeal a regulation on an emergency basis as provided in Government Code section 11346.1. An emergency regulation is only effective for 180 days (unless a longer time is specified in statute). The Office of Administrative Law may approve two re-adoptions of an emergency regulation and each approved re-adoption may be effective for no more than 90 days. And, an emergency regulation is repealed on the date that it ceases to be effective, unless it is certified through the regular rulemaking process described above and submitted to the Office of Administrative Law for review prior to that date.

Request from the Public to Adopt, Amend, or Repeal a Regulation

Except as otherwise provided by statute, any person may petition the Department to adopt, amend or repeal a regulation. The Department must act on such petitions within 30 days of receipt. However, this time may be extended upon agreement of the petitioner. This procedure is set out in Government Code sections 11340.6 and 11340.7.

The Chief Counsel or Chief Counsel's designee will present the petition and the Legal Division's recommendation to the Director or Director's designee. The Director or Director's designee may grant the petition and set the regulation for public hearing, deny the petition in whole or in part, or take any other action determined to be warranted by the petition.

Any interested party may request reconsideration of the Department's action on a petition to amend, adopt, or repeal a regulation within 60 days of the Department's action.