

Regulations: A Primer

Is a regulation the same thing as a law?

Yes. A “law” is a general term. At the Board of Barbering and Cosmetology and other state agencies, a law or rule governing a particular activity is described either as a “statute,” which is a law passed by the Legislature, or a “regulation” which is a rule developed by the individual state agencies that is based on a statute. The statutes affecting the Board fall under the Business and Professions (B&P) Code, while its regulations fall under the California Code of Regulations (CCR).

If the Legislature has already passed a statute, why is a regulation needed?

The statutes of the Legislature often set forth broad requirements and goals and leave the details to individual agencies, which are presumed to have the expertise in their field to fill in the details in a meaningful way. Take the Board’s current effort to develop a “personal service” permit that would allow the permit holder to provide barbering and cosmetology services outside of licensed establishments. Section 7402.5 of the B&P code requires that the Board “issue regulations regarding a personal service permit,” but leaves the specific content of those regulations largely to the Board.

The Board’s health and safety regulations are another example. Section 7312(e) of the B&P mandates that the Board “adopt rules governing sanitary conditions and precautions to be employed as are reasonably necessary to protect the public health and safety ...” It is up to the Board to decide what those “reasonably necessary” rules are.

How does the regulatory process work?

The regulatory process — also known as “rulemaking” — is governed by the California Administrative Procedures Act, which sets forth various steps and procedures the Board must follow in order to create regulations. These procedures are designed to encourage public participation. It is a long process that even under the best circumstances takes about a year to complete.

Here is a brief outline of the major steps involved in creating new regulations, with links to real examples on the Board’s Web site:

- a) Write the regulation: the proposed regulation must be presented in a format that identifies what changes are made. This is usually done through the underline/cross-out format. http://www.barbercosmo.ca.gov/laws_regs/specific_language_military.pdf
- b) Publish the Notice of Proposed Changes or Rulemaking, or Regulatory Action: This notice must be mailed to people on the Board’s interested parties list and published in

the State's Office of Administrative Law (OAL) register. The notice identifies the purpose of the rulemaking and whether the Board plans to hold a hearing on the proposal, and where and when it will be held. If the Board doesn't schedule a hearing, a member of the public may ask for one. By law, the hearing date must be set at least 45 days from the date of the publication of the notice in the OAL register. The public may offer written comments during this period, or at the hearing itself.

http://www.barbercosmo.ca.gov/laws_regs/notice_military.pdf

- c) Produce the Initial Statement of Reasons: This document sets forth in detail the Board's reasons for proposing the regulatory change.
http://www.barbercosmo.ca.gov/laws_regs/isr_military.pdf
- d) Write the Final Statement of Reasons: After the 45-day comment period and the hearing, the Board will address any public comments on this document. If the Board agrees with comments that suggest further changes in the proposed regulations, or if the Board decides to make changes on its own, it will send out a notice to the commenters alerting them of the changes and giving them an additional 15 days to comment. The Final Statement of Reasons will be completed after all comments have been answered.
http://www.barbercosmo.ca.gov/laws_regs/apprentice_fsr.pdf

After internal review, the documents are ultimately included in the Final Rulemaking File and submitted to Office of Administrative Law, which has 30 business days to review, and approve or disapprove the file. If approved, the change is submitted to the Secretary of State for inclusion into the CCR. If disapproved, the agency has the option of making changes that will satisfy OAL and submit them to public review, appeal the decision to the Governor's Office, or withdraw the proposal.