

Notice of Proposed Rulemaking

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

**Amending Sections 21000, 21001, 21001.2, 21001.3, 21002, 21003, 21004, 21005,
21006**

Repealing Sections 21004.5, 21005.5 and 21008

**Title 2 California Code of Regulations
(Business Entity Names)**

Notice is hereby given that the Secretary of State intends to amend the regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

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: October 23, 2020, through December 7, 2020.

Proposed Regulatory Action

The Secretary of State proposes the following regulatory action:
Amend provisions of 2 California Code of Regulations sections 21000, 21001, 21001.2, 21001.3, 21002, 21003, 21004, 21005, 21006 and repeal sections 21004.5, 21005.5 and 21008 to reflect statutory changes in anticipation of the passing of Senate Bill 522 in the California Legislature's 2019 to 2020 session, effective January 1, 2021 and further implement and interpret the requirements of Corporations Code sections 110, 201, 2601, 5008, 5122, 7122, 9122, 10010, 10013, 12214, 12302, 13409, 15901.08, and 17701.08.

Authority and Reference

Authority cited: Corporations Code sections 8, 110, 201, 2106, 2601, 5008, 5122, 7122, 9122, 10010, 10013, 12214, 12302, 13409, 15901.08, 15909.05, 17701.08 and 17708.02.

Reference cited: Corporations Code sections 8, 167, 171, 201, 2101, 2106, 2601, 5008, 5122, 6910, 7122, 8910, 9122, 12302, 13409, 15901.02,

15901.08, 15901.09, 15909.02, 15909.05, 17701.02, 17701.08, 17701.09, 17708.02 and 17708.05.

Informative Digest / Policy Statement Overview

The Secretary of State proposes to amend sections 21000 through 21009 of Title 2 of the California Code of Regulations, which implement, interpret or make specific sections 201, 2601, 5122, 7122, 9122, 12302, 15901.08 and 17701.08 of the Corporations Code. These sections concern the availability of business entity names for Corporations, Foreign Corporations, Limited Liability Companies, Foreign Limited Liability Companies, Limited Partnerships and Foreign Limited Partnerships. The proposed amendments are intended to reflect the new statutory standards effective January 1, 2021.

The specific benefits anticipated by the proposed amendment of these regulations includes helping persons and businesses trying to determine the availability of business entity names prior to filing their documents with the Secretary of State. The existing regulations will not reflect the statutory standards, effective January 1, 2021, that are required to be used in evaluating proposed names for corporations and limited partnerships. Leaving the existing regulations intact would result in confusion among applicants. Amending the regulations to be consistent with the California General Corporations Law, the Social Purpose Corporations Act, the Nonprofit Public Benefit Corporation Law, the Nonprofit Mutual Benefit Corporation Law, the Nonprofit Religious Corporation Law, the Cooperative Corporation Law, Uniform Limited Partnership Act of 2008, and the California Revised Uniform Limited Liability Company Act should result in fewer documents being rejected by the Secretary of State based on unavailable business entity names, which will save those individuals and businesses time and money.

The Secretary of State has considered any other related regulations and statutes on this matter and has determined that this proposed amendment is not inconsistent or incompatible with existing regulations and statutes. The Secretary of State is the only state office responsible for administering the California General Corporations Law, the Social Purpose Corporations Act, the Nonprofit Public Benefit Corporation Law, the Nonprofit Mutual Benefit Corporation Law, the Nonprofit Religious Corporation Law, the Cooperative Corporation Law, Uniform Limited Partnership Act of 2008, and the California Revised Uniform Limited Liability Company Act.

Specifically, through this proposed rulemaking, the Secretary of State proposes to amend California Code of Regulations, Title 2, Division 7, Chapter 8.5 in the following respects:

- 1) The changes to Subsection 21000(a) updates the references to reflect numbering changes to other sections of the Business Entity Name Regulations. The phrase “the same, deceptively similar to, substantially the same as” is being removed to reflect the new standard of distinguishable in the record.
- 2) Changes to Subsection 21000(b) removes the same phrase “the same, deceptively similar to, substantially the same as” to apply the statutory name standard of distinguishable in the record.
- 3) Changes to Subsection 21000(c) removes the phrases “the same as, deceptively similar to,” “or whether a proposed name will require consent from an existing business entity of record for use of a proposed name,” to reflect the new standard of distinguishable in the record.
- 4) Subsection 21001(b) is deleted as the term “Deceptively similar” is no longer part of the standard and no longer needs to be defined.
- 5) Subsection 21001(c) is renumbered to Subsection 21001(b) as the existing 21001(b) is being deleted.
- 6) Subsection 21001(d) is renumbered to Subsection 21001(c) as the existing 21001(c) is being renumbered.
- 7) Subsection 21001(e) is renumbered to Subsection 21001(d) as the existing 21001(d) is being renumbered.
- 8) Subsection 21001(f) is renumbered to Subsection 21001(e) as the existing 21001(e) is being renumbered.
- 9) Subsection 21001(f) is added to define the term “punctuation.”
- 10) Subsection 21001(g) is added to define the term “symbol.”
- 11) Existing Subsection 21001(g) is renumbered to Subsection 21001(h) with the addition of Subsection 21001(f) and Subsection 21001(g).
- 12) Subsection 21001.1(b) is being deleted to apply the statutory name standard (“distinguishable in the records of the Secretary of State”) as “the same as or deceptively similar to” and “substantially similar to” is no longer part of the standard.
- 13) Subsection 21001.1(c) is renumbered to Subsection 21001.1(b) as the existing Subsection 21001.1(b) is being deleted.
- 14) Subsection 21001.3(b) is added to reflect the current standard “likely to mislead the public” to Limited Partnership names.

- 15) Section 21002 is being renamed to delete the standard of “Same or Deceptively Similar Names” and to name it “Punctuation & Symbols” to reflect the statutory standard and retain the punctuation and symbol examples.
- 16) Section 21002, first paragraph is being deleted as it is no longer the applicable standard.
- 17) Subsection 21002(a) is being deleted as it is no longer the applicable standard.
- 18) Subsection 21002(b) is being deleted as it is no longer the applicable standard.
- 19) Subsection 21002(c) is being deleted as it is no longer the applicable standard.
- 20) Subsection 21002(d) is being deleted as it is no longer the applicable standard.
- 21) Subsection 21002(e) is being deleted as it is no longer the applicable standard.
- 22) Subsection 21002(f), first sentence is being deleted to list the following examples of punctuation and symbols.
- 23) Subsection 21002(f)(1) is renumbered to Subsection 21002(a).
- 24) Subsection 21002(f)(2) is renumbered to Subsection 21002(b).
- 25) Subsection 21002(f)(2) examples are deleted to remove the deceptively similar standard examples as it is no longer the applicable standard.
- 26) Subsection 21002(f)(3) is being deleted to remove the deceptively similar standard as it is no longer the applicable standard.
- 27) Subsection 21002(g) is being deleted to remove the deceptively similar standard as it is no longer the applicable standard.
- 28) Subsection 21002(h) is being deleted to remove all examples of the deceptively similar standard as it is no longer the applicable standard.
- 29) Section 21003 is being deleted in its entirety to remove the “Substantially Similar” standard as it is no longer the applicable standard.
- 30) Section 21004 is being deleted in its entirety as it is part of the “Substantially Similar” or “Substantially the Same” standard which requires consent.
- 31) Section 21004.5 is being deleted in its entirety as the “Deceptively Similar and Substantially the Same As” standard is no longer the applicable standard.

32) Section 21005 is being renumbered to Section 21003 as the existing Section 21003 contents are being deleted in its entirety.

33) Section 21005.5 is being renumbered to Section 21004 as the existing Section 21004 contents are being deleted in its entirety.

34) Existing Subsection 21005.5(b)(3) which will be renumbered to Subsection 21004(b)(3), is being amended to reflect the change in reference to the subsection regarding the definitions to punctuations and symbols.

35) Existing Subsection 21005.5(b)(3) which will be renumbered to Subsection 21004(b)(3), examples are being amended to reflect corporate names consistent in the change of the statutory standard to “distinguishable in the record” regarding corporate names.

36) Existing Subsection 21005.5(b) which will be renumbered to Subsection 21004(b), will add Subsection 21004(b)(4) to distinguish the symbol of ampersand with the word “and” to clarify any ambiguity.

37) Existing Subsection 21005.5(b)(4) is being renumbered to Subsection 21004(b)(5) to reflect the addition of the Subsection 21004(b)(4).

38) Existing Section 21006 is being renumbered to Section 21005 as the existing Section 21005 is being renumbered to Section 21003 and the name is reflected to add “Court Judgments” where the existing parts of Subsection 21004.5(b) regarding court judgments is being retained.

39) Existing Subsection 21006(a) which is being renumbered to Subsection 21005(a), is being amended to delete the references to the “substantially the same as” standard as it is no longer the applicable standard.

40) Existing Subsection 21006 which is being renumbered to Section 21005, is adding Subsection 21005(c) regarding court judgments that were originally in Subsection 21004.5(b) as it is being retained.

41) Existing Section 21008 is being renumbered to Section 21006 as existing Section 21006 is being renumbered to Section 21005.

42) Existing Section 21008, first paragraph, which is being renumbered to Section 21006, is being amended to remove the references to “same as, deceptively similar to or substantially the same as” standard which will no longer be used.

Written Comment Period.

Any interested person, or the interested person's authorized representative, may submit written comments relevant to the proposed regulatory action to the Secretary of State. The written comment period closes on December 7, 2020. The Secretary of State will consider only comments received at the Secretary of State's office by that time. Submit comments to:

Lauro Feliciano, Attorney
Secretary of State
1500 11th Street, Sixth Floor
Sacramento, CA 95814
Telephone: 916-695-1290

The backup contact person for comment submission is:

Janessa Huez, Supervising Attorney
Secretary of State
1500 11th Street, Third Floor
Sacramento, CA 95814
Telephone: 916-695-1242

All inquiries regarding this proposed rulemaking, including requests for obtaining the Final Statement of Reasons, should be directed to Lauro Feliciano at the address listed above.

Disclosures Regarding the Proposed Action.

The Secretary of State has made the following initial determinations:

1. **Mandate on local agencies and school districts:** None.
2. **Costs or savings to any state agency:** None beyond those budgeted or expected to be budgeted for the Secretary of State.
3. **Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630:** None.
4. **Other nondiscretionary costs or savings imposed on local agencies:** None.
5. **Costs or savings in federal funding to the state:** None.
6. **Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states:** None.

7. **Cost impacts on a representative private person or businesses:** The Secretary of State anticipates negligible overall cost savings to private persons and businesses. The proposed changes to the regulations will help persons and businesses determine the availability of business entity names prior to filing their documents with the Secretary of State and will reflect statutory changes based on the California General Corporations Law, the Social Purpose Corporations Act, the Nonprofit Public Benefit Corporation Law, the Nonprofit Mutual Benefit Corporation Law, the Nonprofit Religious Corporation Law, the Cooperative Corporation Law, Uniform Limited Partnership Act of 2008, and the California Revised Uniform Limited Liability Company Act. This should result in fewer documents being rejected by the Secretary of State based on unavailable business entity names, which will save those individuals and businesses time and money. The net result is expected to be neutral or result in a very small savings to applicants.
8. **Adoption of these amendments will not:**
 - (A) create or eliminate jobs within California;
 - (B) create new businesses or eliminate existing businesses within California;
 - or
 - (C) affect the expansion of businesses currently doing business within California.
9. **Significant effect on housing costs:** None.
10. **Effect on small business:** None. The proposed amendments do not impose any mandatory fees on small businesses or require any forms or reports be prepared or filed by any business.

Results of the Economic Impact Analysis/Assessment

The proposed regulatory amendments reflect the statutory changes in anticipation of the passing of Senate Bill 522 in amending the California General Corporations Law, the Social Purpose Corporations Act, the Nonprofit Public Benefit Corporation Law, the Nonprofit Mutual Benefit Corporation Law, the Nonprofit Religious Corporation Law, the Cooperative Corporation Law, Uniform Limited Partnership Act of 2008, and the California Revised Uniform Limited Liability Company Act. Accordingly, no jobs in California will be created or eliminated, no new businesses in California will be created or existing businesses eliminated, and no existing businesses in California will be expanded or eliminated.

Amending the Business Entity Name Regulations will help persons and businesses trying to determine the availability of business entity names prior to filing their documents with the Secretary of State and will reflect statutory changes based on the California General Corporations Law, the Social Purpose Corporations Act, the

Nonprofit Public Benefit Corporation Law, the Nonprofit Mutual Benefit Corporation Law, the Nonprofit Religious Corporation Law, the Cooperative Corporation Law, Uniform Limited Partnership Act of 2008, and the California Revised Uniform Limited Liability Company Act. The existing regulations will not reflect the statutory standards, effective January 1, 2021, in evaluating limited liability company proposed names and left intact would result in confusion among applicants. Amending the regulations to be consistent with the California General Corporations Law, the Social Purpose Corporations Act, the Nonprofit Public Benefit Corporation Law, the Nonprofit Mutual Benefit Corporation Law, the Nonprofit Religious Corporation Law, the Cooperative Corporation Law, Uniform Limited Partnership Act of 2008, and the California Revised Uniform Limited Liability Company Act should result in fewer documents being rejected by the Secretary of State based on unavailable business entity names, which will save those individuals and businesses time and money.

Consideration of Alternatives

In accordance with Government Code section 11346.5(a)(13), the Secretary of State must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective as and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Secretary of State invites persons to present statements or arguments with respect to alternatives to the proposed amendments during the written comment period.

Availability of Statement of Reasons and Text of Proposed Regulations.

The Secretary of State will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this Notice of Proposed Rulemaking, the regulations as proposed, and the Initial Statement of Reasons. The rulemaking file includes all the information upon which the proposed action is based. Copies are posted on the Secretary of State's website at <http://www.sos.ca.gov/admin/regulations/proposed/> and may also be obtained from the contact person indicated above.

Availability of Changed or Modified Text.

After considering all timely and relevant comments received, the Secretary of State may adopt the proposed regulations substantially as described in this Notice of Proposed Rulemaking. If the Secretary of State makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly

indicated) available to the public for at least 15 days before the Secretary of State adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of the contact person indicated above. The Secretary of State will accept written comments on the modified regulations for 15 days after the date on which the modified regulations are made available.

Availability of Rulemaking Documents and the Final Statement of Reasons.

Copies of rulemaking documents can be accessed through the Secretary of State's website at <http://www.sos.ca.gov/admin/regulations/proposed/>. Upon completion, the Final Statement of Reasons will be posted on the Secretary of State's website or obtained from the contact person indicated above.