

STATE OF CALIFORNIA
OFFICE OF ADMINISTRATIVE LAW
FIRST READOPTION OF EMERGENCY RULEMAKING ACTION
ELECTRONIC SUBMISSION OF NOTICES OF PROPOSED ACTION,
REGULATORY ACTIONS, AND CHANGES WITHOUT REGULATORY EFFECT

NOTICE OF PROPOSED EMERGENCY ACTION

Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of a proposed emergency action to the Office of Administrative Law (OAL), the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to OAL, OAL shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.

OAL intends to submit this proposed emergency action for review on **April 29, 2021**. The submitted action will appear on the list of "Emergency Regulations Under Review" on OAL's website at oal.ca.gov/emergency_regulations/emergency_regulations_under_review.

Comments must be submitted in writing to OAL at:

Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, CA 95814
Fax: (916) 323-6826
Email: staff@oal.ca.gov

A copy of the comments must be submitted in writing to the contact person at:

Office of Administrative Law
Attn: Eric Partington
300 Capitol Mall, Suite 1250
Sacramento, CA 95814
Fax: (916) 445-9515
Email: eric.partington@oal.ca.gov

FINDING OF EMERGENCY

On March 4, 2020, Governor Gavin Newsom declared an emergency in the state of California in response to the outbreak of respiratory illness due to the novel coronavirus known as COVID-19. On March 19, 2020, Governor Newsom issued Executive Order N-33-20, a stay-at-home order to protect Californians and slow the spread of COVID-19. The order mandates that all residents heed current public health directives, fundamentally ordering all but the most essential workers to stay home.

The requirements of the California Administrative Procedure Act (APA) remain largely unchanged by the Governor's actions, which means that state agencies are still generally required to promulgate regulations pursuant to the APA. The APA requires state agencies to submit a variety of documents to OAL for review. While OAL's existing regulations do not expressly prohibit electronic submission of these documents, they also do not offer guidance regarding, for example, distinctions between hard-copy and electronic documentation requirements or acceptance of digital signatures. As a result, most documents submitted to OAL are hard copies.

Paper documents that must be wet-signed and then hand-delivered or mailed to OAL are consequently routed to and handled by more Californians, which therefore potentially increases COVID-19 exposure and transmission. By contrast, COVID-19 exposure and transmission would be lessened if agencies were able to utilize digital signatures to satisfy APA signature requirements and electronically submit APA-related documents to OAL.

Considering the ability of this virus to live on a non-organic surface for five days, paper-based transactions place state employees at needless risk. Clear instructions for submission of paperless and contactless documents and use of digital signatures would allow state agencies to continue promulgating regulations in full compliance with the APA to carry out their missions and provide critical services without unnecessarily exposing employees and other Californians to COVID-19.

In the weeks since Executive Order N-33-20 was issued, numerous agencies have requested that OAL accept electronic submissions and digitally signed documents. These agencies have been experiencing significant difficulties with obtaining wet signatures on hard-copy documents and compiling and submitting hard-copy rulemaking files to OAL as employees shelter in place and work remotely.

In light of the ongoing state of emergency in California, the need demonstrated by agencies struggling to simultaneously comply with the APA and the stay-at-home order, and COVID-19's aggressive virulence, OAL finds the lack of a detailed process for state agencies to digitally sign and electronically submit APA-related documents to OAL to be an emergency, as defined in section 11342.545 of the Government Code, and proposes to immediately adopt emergency regulations to avoid serious harm to the health, safety, and general welfare of Californians.

The emergency circumstances described above that led to the initial adoption of these emergency regulations are unchanged. Since the emergency regulations became operative in July 2020, OAL has made substantial progress and proceeded with diligence toward making the regulations permanent in accordance with section 11346.1(e) of the Government Code. While OAL's emergency regulations facilitated contactless submission of many electronic rulemaking actions by state agencies over the past nine months, the overall learning curve for submitting agencies as well as OAL staff has been steeper than expected. OAL staff has spent hundreds of hours assisting state agencies with the submission process; while this expenditure of resources has been far greater than anticipated, we have gained valuable experience implementing the new process and learning what works well and what needs further consideration. State agencies have been providing OAL with a wealth of feedback that we are still reviewing as we refine the process to address current limitations and make electronic submissions more intuitive. Further, OAL has enlisted IT services to assist in evaluating available technologies that may potentially ease access for submitting agencies (e.g., utilizing the OAL website as a portal to receive electronic submissions rather than limiting the process to email). Despite the impact of COVID-19 on OAL's day-to-day activities, we anticipate publishing the Notice of Proposed Action to make these emergency regulations permanent in late May or early June 2021.

AUTHORITY

Government Code section 11342.4

REFERENCE

Government Code sections 11343, 11343.1, 11343.8, 11346.1, 11347.3, and 11349.6.

INFORMATIVE DIGEST

Government Code section 11340.5 requires agencies to adopt regulations pursuant to the APA unless there is an express statutory exemption. Government

Code section 11343 requires agencies to deliver notices of proposed regulatory action and transmit certified copies of proposed regulation text to OAL, and requires certification of proposed regulation text to be made by the agency head or their delegate in writing. Existing regulations in chapter 1, division 1, title 1 of the California Code of Regulations (CCR) establish requirements and procedures for submitting these and other related documents to OAL.

The Uniform Electronic Transactions Act (UETA) (Civ. Code, secs. 1633.1-1633.17) provides that laws requiring records in writing or handwritten signatures are satisfied by electronic records or electronic signatures, respectively.

Government Code section 16.5 defines a "digital signature" as a type of electronic signature under the UETA, and sets forth a list of attributes that digital signatures must embody in order to be used or accepted by public entities in California, including all state agencies. Existing regulations promulgated by the California Secretary of State in chapter 10, division 7, title 2 of the CCR further implement Government Code section 16.5.

The changes proposed in this emergency rulemaking action would reduce the number of hard-copy documents required for submission of notices of proposed action. The proposed changes would establish new procedures for electronic submission of notices of proposed action, certified regulation text, rulemaking files, and other APA-related documents to OAL. The proposed changes would establish detailed requirements for electronic submissions, including file format types, file size limits, email addresses, and daily cutoff times. The proposed changes would allow agency heads and their delegates to certify regulation text using digital signatures created in compliance with existing law.

The objective of these regulations is to decrease the spread of COVID-19 by reducing the total number of documents agencies must provide when submitting paper-based notices of proposed action to OAL, and providing agencies with a straightforward, efficient, paperless and contactless process for submitting notices of proposed action, regulatory actions, and changes without regulatory effect to OAL.

The only existing state regulations concerning submission of the APA-related documents described above to OAL are in division 1, title 1 of the CCR. After careful evaluation, OAL has determined that the proposed changes are not inconsistent or incompatible with existing regulations.

LOCAL MANDATE DETERMINATION

OAL has determined that the proposed changes do not impose a mandate on local agencies or school districts.

COST ESTIMATES

OAL anticipates that the proposed changes will lead to a reduction in printing materials (e.g., paper, toner) used for purposes of submitting APA-related documents to OAL, which should result in a small savings to state agencies. OAL does not anticipate that the proposed changes will result in any reimbursable costs to local government agencies, nondiscretionary costs or savings to local government agencies, or costs or savings in federal funding to the state.

NECESSITY

Section 1, subsection (a)(3). The Form 400 revision date of January 2013 is inaccurate. Though OAL is responsible for its content, the Form 400 is one of many standard forms maintained by the Department of General Services (DGS). DGS updated the Form 400 in October 2019 to comply with accessibility requirements of the Americans with Disabilities Act (ADA), and the revision date of the form was changed accordingly. This subsection must be amended to reflect the correct revision date. The content of the Form 400 has not changed.

Section 5, title. "(Form 400)" is being removed because section 5 governs the submission of many documents, not just the Form 400.

Section 5, subsection (b)(1). This subsection is being amended to only include requirements for hard-copy notice submissions. The number of required copies of the notice is being reduced from four to two because OAL only needs two copies of the notice and text to perform its review. This change is needed to eliminate waste and reduce printing expenses for state agencies. This change is also needed to mitigate COVID-19 exposure, since reducing the number of documents required to be printed and delivered to OAL will reduce the available pathways for transmission of the virus.

Section 5, subsection (b)(2). This subsection is being amended to only include requirements for electronic notice submissions. Only one copy of the notice and Form 400 are required because unlike hard-copy documents, electronic documents can be easily duplicated and routed during OAL's review without increasing the risk of COVID-19 exposure.

Section 5, subsection (b)(2)(A). This subsection establishes file format and size requirements. OAL has limited technological capability and support and must limit file formats and sizes to ensure that all electronic submissions can be accessed and reviewed. Portable Document Format (PDF) is proposed as the only permissible file format because the software is widely available and supports the creation, use, and verification of digital signatures, most other file formats can be easily converted to PDF format, and OAL has the resources to

review PDF documents. All electronic documents must be submitted attached to one email because allowing multiple emails would create logistical complications for OAL, and the critically important submission date would be more difficult to determine for a notice of proposed action submitted incrementally over time. The proposed maximum email size is 25MB because OAL's email system will not allow delivery of messages that exceed that limit.

Section 5, subsection (b)(2)(B). The specific email account to which electronic notice submissions must be sent is being established and identified here in order to provide agencies with clear instructions that will mitigate the number of misdirected submissions, and because monitoring only a single dedicated email account for new electronic notice submissions will be the most efficient use of OAL's limited resources.

Section 5, subsection (b)(2)(C). OAL's hours of operation are from 8:00 a.m. to 5:00 p.m., Monday through Friday. OAL is closed on weekends and state holidays. This provision is necessary because OAL does not have the resources to fund overtime pay for staff members who, for example, work late to process submissions received after 5:00 p.m. Agencies need to understand the ramifications of submitting notices outside of OAL's operating hours.

Section 5, changes without regulatory effect. Subsections (b)(1) and (b)(2) are being amended to remove a cross-reference to Government Code section 11346.2(a) and instead identify the document required by that statute, which will be clearer to the reader. Non-substantive grammatical corrections (e.g., removal of superfluous language, ensuring consistent capitalization of terms) are being made throughout section 5.

Section 6, title. "(Form 400)" is being removed because section 6 governs the submission of many documents, not just the Form 400. "Hard-copy" is being added because section 6 is being amended to limit its scope to hard-copy submissions only.

Section 6, subsection (a). The non-exclusive list of regulatory action types is being removed as unnecessary since the beginning of the sentence clearly states that section 6 applies to all regulatory actions. Specifically regarding the Form 400, the term "original signature" is being changed to "wet signature" because the former is not defined or used by any APA statute and the commonly understood definition has changed since the term was first adopted by OAL. Once synonymous with "wet signature," "original signature" is now commonly understood to refer to a wet signature on a paper document as well as a digital or other electronic signature on an electronic document. It is

necessary to use the commonly understood term “wet signature” to clarify the type of signature required on the hard-copy Form 400.

Section 6, changes without regulatory effect. Non-substantive grammatical corrections (e.g., removal of superfluous language, changing “shall” to “must,” ensuring consistent use of active voice) are being made throughout section 6.

Section 6.5, title. The title of proposed new section 6.5 is drafted to align with proposed changes to the titles of sections 5 and 6.

Section 6.5, subsection (a). This new subsection establishes specific requirements for electronically submitted regulatory actions. Subsections (a)(1) through (a)(1)(B) mirror the existing requirements in section 6, subsection (a) regarding the number of required copies of the Form 400 and certified regulation text. Seven copies of the certified text are required pursuant to Government Code section 11343, and each copy of the text is required to be accompanied by a Form 400 to maintain uniformity across title 1 of the CCR and because it is easier to submit, track, review, and otherwise manage seven identical files than six identical files containing only certified text plus one different file containing certified text and the Form 400. It is necessary to specify in subsection (a)(1)(A) that an electronic Form 400 must be digitally signed to clarify that OAL will not accept, for example, submissions of regulatory actions that are electronic except for hard-copy, wet-signed forms, or “digitized” forms that were wet-signed and then scanned or otherwise converted into PDF format. Allowing hybrid submissions (i.e., submissions that are part hard-copy, part electronic) would complicate OAL’s intake processes and, more importantly, defeat OAL’s purpose of lessening COVID-19 exposure by accepting fully paperless and contactless submissions. Digitized submissions are prohibited because digitized signatures cannot be created, used, or verified in compliance with Government Code section 16.5. Subsection (a)(1)(A) requires the electronic Form 400 to be completed in the same manner as a hard-copy Form 400, and simply cross-references the applicable requirements in section 6 rather than duplicating them. Subsection (a)(2) expressly allows for electronic submission of all rulemaking documentation required by law, and provides a non-exclusive list in subsections (a)(2)(A) through (C) designed to assist the reader by providing examples and helpful cross-references to related laws. Without these examples, there is a danger that agencies might interpret subsection (a)(2) as solely referring to the rulemaking file described in Government Code section 11347.3, which is a narrower scope than OAL intends.

Section 6.5, subsection (b). This subsection establishes file format and size requirements. OAL has limited technological capability and support and must

limit file formats and sizes to ensure that all electronic submissions can be accessed and reviewed. PDF is proposed as the only file format because the software is widely available and supports the creation, use, and verification of digital signatures, most other file formats can be easily converted to PDF format, and OAL has the resources to review PDF documents. All electronic documents must be submitted attached to one email because allowing multiple emails would create logistical complications for OAL, and the critically important submission date would be more difficult to determine for a regulatory action submitted incrementally over time. The proposed maximum email size is 25MB because OAL's email system will not allow delivery of messages that exceed that limit.

Section 6.5, subsection (c). The specific email account to which electronic submissions other than notices of proposed action must be sent is being established and identified here in order to provide agencies with clear instructions that will mitigate the number of misdirected submissions, and because monitoring only a single dedicated email account for new electronic submissions will be the most efficient use of OAL's limited resources.

Section 6.5, subsection (d). OAL's hours of operation are from 8:00 a.m. to 5:00 p.m., Monday through Friday. OAL is closed on weekends and state holidays. This provision is necessary because OAL does not have the resources to fund overtime pay for staff members who, for example, work late to process submissions received after 5:00 p.m. Agencies need to understand the ramifications of submitting electronic regulatory actions outside of OAL's operating hours. The exception for electronic emergency regulatory actions is explained below.

Section 6.5, subsection (e). Government Code section 11349.6(b) requires OAL to post notice on its website of each emergency regulatory action submitted for review. This posting officially marks the beginning of the statutory 5-day comment period. Since no other type of submission is required to be posted in this manner, emergency regulatory actions universally require more OAL staff resources and time to process than any other regulatory actions. Subsection (e) establishes a cut-off time of 4:00 p.m. for electronic submissions of emergency regulatory actions; electronic emergency regulatory actions received by OAL after this time will not be considered submitted and notices of filing for these actions will not be posted until the following business day. Without this limitation in place, OAL staff would be forced to process and post notices of filing for emergency regulatory actions received electronically at the very end of a workday, which would require staff to work late and OAL to pay overtime. Because OAL has limited ability to fund overtime pay, subsection (e) is necessary

to provide OAL staff with enough time to complete all required tasks during normal operating hours, and to inform agencies of the ramifications of submitting electronic emergency regulatory actions late in the day.

Section 50, title. This title is being amended because section 50 will no longer be the only section governing submission of emergency regulatory actions, and it is important to clearly inform the reader of the existence of special requirements for emergency actions.

Section 50, subsection (a). This subsection is being amended to align with the syntax used in similar provisions in sections 6, 6.5, and 100. Existing subsections (a)(1) and (a)(2) are being deleted because the requirements for submission of the Form 400 and certified regulation text are already in section 6 for hard-copy submissions and section 6.5 for electronic submissions. Leaving the requirements in section 50 would be redundant. New subsection (a)(1) is needed to clearly direct the agency to prepare the emergency-specific documentation in subsection (b). New subsection (a)(2) contains express instructions for submitting the hard-copy documentation in subsection (b) along with all required copies of the Form 400 and regulation text described in section 6, subsection (a). This is necessary because although section 6 generally contains requirements for hard-copy submission of all regulatory actions, it does not specifically identify the special, additional documentation required for hard-copy submission of emergency regulatory actions. New subsection (a)(3) includes instructions exclusively for electronic submission of documentation in subsection (b). While subsection (a)(3) essentially restates the requirements in section 6.5, subsections (a)(2) and (a)(2)(B), including this language is necessary to prevent confusion regarding the applicability of section 50. Without this subsection, an agency might incorrectly interpret section 50 as only applicable to hard-copy submissions of emergency regulatory actions.

Section 50, subsection (b). Existing subsections (a)(3) through (a)(5)(B)2. comprise the remaining special requirements for submission of emergency regulatory actions. These subsections will now follow new subsection (b), which is being adopted to provide a clear caption for the special requirements. The existing subsections are being renumbered accordingly, although their contents are not being substantively changed.

Section 50, subsection (c). Existing subsection (b) is being renumbered to (c) and two cross-references are being amended to correspond to the renumbered provisions in new subsection (b).

Section 52, subsection (b). This subsection is being amended to refer to new section 6.5. This is necessary because the requirements in section 52 apply not

only to hard-copy submissions of emergency regulatory actions governed by sections 6 and 50, but also electronic submissions of emergency regulatory actions governed by section 6.5.

Section 100, subsection (b). Subsection (b)(3) is being renumbered to (b)(1) and the word “submit” is being changed to “Prepare” because in practice, agencies will prepare the written statement as prescribed by this subsection and then submit the statement pursuant to a different subsection. Existing subsections (b)(1) and (b)(2) are being replaced by a new subsection (b)(2) that contains requirements exclusively for hard-copy submissions of changes without regulatory effect, including the written statement prepared pursuant to subsection (b)(1) and the documents described in section 6, subsection (a). New subsection (b)(3) similarly contains requirements exclusively for electronic submissions of changes without regulatory effect, including the written statement prepared pursuant to subsection (b)(1), the electronic files described in section 6.5, subsection (a)(1), and the same file format, maximum email size, and daily submission cut-off time being proposed in section 5, subsections (b)(2)(A)-(C), and section 6.5, subsections (b)-(d). Subsections (b)(2) and (b)(3) are necessary because sections 6 and 6.5 govern submission of regulatory actions promulgated in compliance with the rulemaking procedures specified in article 5 of the APA, but changes to CCR text made in accordance with section 100 do not need to comply with article 5. Thus, the submission requirements in sections 6 and 6.5 do not apply, and OAL must expressly establish distinct instructions for submission of changes without regulatory effect here in section 100. The proposed electronic filing requirements in subsections (b)(3)(A)-(C) are necessary for the reasons described above regarding identical proposed language in sections 5 and 6.5.

Section 100, changes without regulatory effect. Subsection (b) is being changed to align with the syntax used in similar provisions in sections 6, 6.5, and 50. The Reference note is being amended to delete an irrelevant citation.

Section 101, subsection (a). This proposed subsection establishes a condition that must be satisfied before an agency may submit electronic documents containing digital signatures to OAL. This condition is necessary because all digital signatures used or accepted by state agencies must comply with Government Code section 16.5 and its implementing regulations in chapter 10, division 7, title 2 of the CCR. OAL is willing to accept digital signatures but possesses neither the resources nor the technical expertise required to investigate, review, or otherwise determine whether the digital signature provided on each electronically submitted Form 400 was created in compliance with California law. Since the statute clearly imposes a

corresponding duty on the agency using a digital signature to ensure that signature's compliance with law, OAL has determined that its legal obligations regarding digital signature acceptance can be met simply by requiring each agency head to certify, in writing, that their digital signature complies with relevant California law before submitting any digitally signed documents to OAL. To that end, OAL drafted the standardized language included in this subsection to clearly identify all applicable APA and digital signature laws and expressly state that certification in accordance with section 101 is a prerequisite to submitting electronic documents containing digital signatures.

Section 101, subsection (b). This subsection establishes additional requirements for agency heads who delegate their authority to certify regulation text to other named individuals pursuant to Government Code section 11343(g). The standardized language in this subsection is necessary for the same reasons provided above regarding similar language proposed in subsection (a), and to clearly identify each person to whom certification authority is being delegated. Further, this certification necessarily allows an agency head to satisfy the additional Government Code section 11343(g) mandate that delegations of authority to certify regulation text be made in writing.

Section 101, subsection (c). This subsection requires the certifications in subsections (a) and (b) to be signed and dated by the agency head. The signature requirement is designed to eliminate the possibility of OAL receiving certifications made by individuals other than the agency head, without the agency head's knowledge. The date is necessary to ensure that OAL always has the correct certifications and delegations on file, which will eliminate confusion if, for example, an agency submits additional or revised certifications after submitting the initial certification.

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FINDING OF EMERGENCY - ADDENDUM

In addition to making the changes described in the original Finding of Emergency, the Office of Administrative Law (OAL) modified the text as described below.

Section 1, changes without regulatory effect. The second page of the Form 400, as printed in Appendix A to OAL's regulations in title 1 of the California Code of Regulations (CCR), includes instructions for filling out the form. These instructions repeat or rephrase OAL's regulations without providing any additional substantive information or establishing any further regulatory requirements. Since these instructions are non-substantive and duplicative in nature and will be rendered obsolete when OAL's proposed emergency regulations become effective, OAL determined that repealing page two of the Form 400 is necessary to address this issue and avoid any potential confusion.

Section 5, changes without regulatory effect. Subsections (b)(1) and (b)(2) are being further amended to explicitly identify all documents required to be submitted with a notice pursuant to Government Code section 11346.4(a)(5), not just the proposed regulation text required pursuant to Government Code section 11346.2(a). The documents identified are the Notice of Proposed Action, STD. 399, and Initial Statement of Reasons.

Section 101, changes without regulatory effect. Subsections (a) and (b) are being further amended to remove the reference to Government Code section 11343(g) from the proposed certification statements. OAL regularly files other agencies' proposed actions that are exempt from all or part of the Administrative Procedure Act (APA). These actions may not be subject to Government Code section 11343(g) but still must include a signed Form 400 pursuant to OAL's regulations; accordingly, agencies will still have to comply with section 101 if they want to electronically submit an APA-exempt action. Removing this statutory reference from section 101 maintains alignment with existing law and eliminates any potential confusion over the scope of the rule.

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PROPOSED REGULATION TEXT¹

Title 1. General Provisions

Division 1. Office of Administrative Law

Chapter 1. Review of Proposed Regulations

Article 1. Chapter Definitions

Section 1. Chapter Definitions.

(a) The following definitions shall apply to the regulations contained in this chapter:

(1) "APA" means the part of the California Administrative Procedure Act appearing in California Government Code, Title 2, division 3, part 1, chapter 3.5, commencing with section 11340, which generally governs the adoption, amendment, or repeal of regulations by California state agencies.

(2) "Certificate of compliance" means a statement by the head of the rulemaking agency that the agency has complied with the provisions of Government Code sections 11346.2 through 11347.3 prior to the expiration of the effective period of the emergency regulations. After the adoption of emergency regulations, this statement is submitted to OAL for review along with the regulatory text and the rulemaking file.

¹ Please note that the Proposed Regulation Text has been illustrated for greater accessibility. Proposed changes are illustrated with additions in underlining and the following bracketed text: [begin underline], [end underline], to show where the new text is being added. Proposed text for deletion (repeal) is shown in strikethrough with the additional bracketed text [begin strikethrough] and [end strikethrough] to denote the beginning and end of stricken text.

(3) "Form 400" means the form entitled "Notice Publication/Regulations Submission" STD. 400 ([change date from 01-2013 to 10-2019]-~~rev. 01-2013~~REV. 10/2019), which appears in Appendix A to article 2 of this chapter.

(4) "OAL" means "the Office of Administrative Law."

(5) "Regular rulemaking" means the original submission of a regulatory action, other than a certificate of compliance filing, subject to review by OAL within thirty working days of receipt.

Note: Authority cited: Section 11342.4, Government Code. Reference: Sections 11340.2, 11342.550, 11343, 11346.1 [begin strikethrough] ~~(e)~~ [end strikethrough], 11349.3 [begin strikethrough] ~~(e)~~ [end strikethrough], 11349.6 [begin strikethrough] ~~(d)~~ [end strikethrough] and 11370, Government Code.

Section 5. Submission of Notices for Publication [~~begin strikethrough~~] (~~Form 400~~) [~~end strikethrough~~].

(a) Each Friday is designated as the publication date of the California Regulatory Notice Register.

(b) At least ten calendar days before the desired publication date of any notice, an agency shall submit [~~begin strikethrough~~] ~~the following~~ [~~end strikethrough~~] to OAL:

(1) [~~begin underline~~] For hard-copy submissions, two [~~end underline~~] [~~begin strikethrough~~] ~~four~~ [~~end strikethrough~~] copies of the [~~begin strikethrough~~] ~~notice with a~~ [~~end strikethrough~~] Form 400 [~~begin strikethrough~~] (~~see Appendix A to this Article~~), ~~or copy thereof,~~ [~~end strikethrough~~] with Part A completed, [~~begin strikethrough~~] ~~attached to the front of~~ [~~end strikethrough~~] [~~begin underline~~] and [~~end underline~~] two [~~begin strikethrough~~] ~~of the~~ [~~end strikethrough~~] copies of the notice [~~begin strikethrough~~], ~~and,~~ [~~end strikethrough~~] [~~begin underline~~] . If the notice is submitted pursuant to Government Code section 11346.4(a)(5), then in addition to the Notice of Proposed Action and the STD. 399, the submission shall also include, pursuant to Government Code section 11346.2(a) and (b), one copy of the express terms of the proposed regulation and the initial statement of reasons. [~~end underline~~]

(2) [~~begin underline~~] For electronic submissions, an electronic file containing one electronic Form 400 with Part A completed and one electronic copy of the notice. [~~end underline~~] [~~capitalize the letter l in the word if~~] ~~if~~ the notice is [~~begin strikethrough~~] ~~a notice of proposed regulatory action~~ [~~end strikethrough~~] submitted pursuant to Government Code section 11346.4(a)(5), [~~begin underline~~] then in addition to the Notice of Proposed Action and STD. 399, [~~end underline~~] the [~~begin underline~~] electronic [~~end underline~~] submission shall also include [~~begin underline~~], pursuant to Government Code section 11346.2(a) and (b), [~~end underline~~] [~~begin strikethrough~~] ~~&~~ [~~end strikethrough~~] [~~begin underline~~] one electronic [~~end underline~~] copy of [~~begin strikethrough~~] ~~each document required by Government Code section 11346.2(a)~~ [~~end strikethrough~~] [~~begin underline~~] the express terms of the proposed regulation and the initial statement of reasons. [~~end underline~~]

[~~begin underline~~] (A) The agency must submit all electronic documents described in subsection (b)(2) in PDF format as attachments to a single email, which may not exceed 25MB in size.

[~~begin underline~~] (B) Electronic notices may only be submitted to OAL at NOPA@oal.ca.gov.

(C) OAL will consider electronic notices received after 5:00 p.m. on a business day, or at any time on a weekend or holiday, to be submitted on the following business day. [end underline]

(c) The Form 400 [~~begin strikethrough~~] ~~attached to the notice as provided in subsection (b), above, shall~~ [end strikethrough] [~~begin underline~~] must [end underline] contain:

(1) a description of the subject matter of the notice and, if the notice is a notice of proposed regulatory action, the title(s) of the California Code of Regulations affected, with the first affected regulation section number listed;

(2) the requested publication date;

(3) the type of notice;

(4) the name of the submitting agency and the agency file number, if any, as well as the name and telephone number of an agency contact person for the notice submission;

(5) if the notice is a notice of proposed regulatory action submitted after an emergency filing, the agency shall enter the number assigned by OAL to the emergency filing in the box marked "All Previous Related OAL Regulatory Action Number(s)" (box 1b. of Part B); and

(6) if the notice is a notice of proposed regulatory action submitted after the readoption of an emergency filing, the agency shall enter the number assigned by OAL to the readoption of the emergency filing and the number assigned by OAL to the original emergency filing in the box marked "All Previous Related OAL Regulatory Action Number(s)" (box 1b. of Part B).

(d) Except for the types of notices described below in this subsection, the agency shall pay a notice printing fee to OAL in the amount of \$40.00 per page, or any portion thereof, as printed in the California Regulatory Notice Register:

(1) a notice of proposed regulatory action submitted pursuant to Government Code section 11346.4(a)(5);

(2) a notice otherwise required by statute to be published in the California Regulatory Notice Register; or,

(3) a notice modifying information contained in a notice described in subsections (d)(1) or (d)(2) above.

(e) If a notice of proposed regulatory action fails to comply with the requirements of this [~~replace capitalized letter A with a lower case a in the word~~

article] Article, or sections 11346.3, 11346.4(a)(5), and 11346.5 of the Government Code, OAL shall contact the agency within three business days to correct any deficiencies. If the deficiencies are not corrected by agreement between OAL and the agency within the three- business- day period, OAL shall promptly return the notice to the agency with a letter explaining the reasons for disapproval.

Note: Authority cited: Section 11342.4, Government Code. Reference: Sections 11344.1, 11346.2, 11346.3, 11346.4 and 11346.5, Government Code.

Section 6. Hard-copy Submission of Regulatory Actions ~~(Form 400)~~.

(a) For ~~replace capitalized letter A with a lower case a in the word all~~ All regulatory actions submitted in hard copy to OAL for publication in the California Code of Regulations and/or ~~for~~ transmittal to the Secretary of State for filing, ~~including, but not limited to, the types of regulatory actions specified in subsection (b)(3) of this section~~ ~~shall~~ the agency must include seven copies of the certified ~~regulation(s)~~ text. A completed Form 400, ~~(see Appendix A to this Article)~~ with the ~~original~~ wet signature of the person making the certification referred to in subsection (b)(8), ~~of this section shall~~ must be attached to the front of one ~~of the~~ copy copies of the certified ~~regulation(s)~~ text. ~~A copy~~ text, and a copy of ~~this~~ the completed and signed Form 400 ~~shall~~ must be attached to each of the remaining six copies of the certified ~~regulation(s)~~ text ~~submitted to OAL~~.

(b) The completed Form 400 ~~attached to the regulation(s) submitted to OAL shall~~ must contain:

(1) Subject of Regulation(s);

(2) the title(s) of the California Code of Regulations affected and a list of all regulation sections being adopted, amended or repealed;

(3) the type of regulatory filing:

(A) Regular rulemaking (Gov. Code, secs. 11346 and 11349.1);

(B) Resubmittal of regulatory actions (Gov. Code, secs. 11346.1, 11349.3, and 11349.4);

(C) Changes without regulatory effect (Cal. Code Regs., tit[begin strikethrough]1e[end strikethrough] [begin underline]. [end underline] 1, sec[begin strikethrough]10A[end strikethrough] [begin underline]. [end underline] 100);

(D) Emergency (Gov. Code, secs. 11346.1 and 11349.6);

(E) Certificate of Compliance (Gov. Code, sec. 11346.1(e)).

(F) "Print Only" requests for:

1. regulations adopted pursuant to the requirements of the APA, but which are expressly exempted by statute from OAL review; or

2. regulations not required to be printed in the California Code of Regulations, but which the adopting agency desires to have printed pursuant to Government Code section 11343.8;

(G) "File and Print"

(H) Other (i.e., not listed in subsections (A) through (G), above) describing the nature of the filing;

(4) the beginning and ending dates of all public availability periods pursuant to section 44 of this [replace capitalized letter A with a lower case a in the word article] aArticle and section 11347.1 of the Government Code;

(5) the requested effective date of regulatory changes (Gov. Code, sec. 11343.4);

(6) if a statute requires that, prior to submitting the regulatory action to OAL, the rulemaking agency provide notice to another agency or entity of the regulatory action, or otherwise to submit the regulations to another agency or entity for review, consultation, approval, or concurrence, at any time prior to the submission of the regulations to OAL, the name of any and all such agencies or entities;

(7) the name and telephone number of an agency contact person for the regulatory action;

(8) a signed certification by an agency official authorized to make the certification stating:

(A) that the attached copy of the regulation is a true and correct copy of the regulation identified on the Form 400;

(B) that the information specified on the Form 400 is true and correct;

(C) that the person signing the certification is the head of the agency, or a designee of the agency head, authorized to make the certification;

(D) the date the certification is made; and,

(E) the typed name and title of the person making the certification;

(9) the file number(s) previously assigned by OAL:

(A) to the submission of the notice of proposed regulatory action (the "Notice File Number");

(B) to the prior submission(s) of the regulatory action (the "Regulatory Action Number") if the present filing is the resubmission of a disapproved or withdrawn regulatory action (place this file number in the box marked "All Previous Related OAL Regulatory Action Number(s)");

(C) to the submission of the original emergency regulatory action (the "Emergency Number") if the present filing is a certificate of compliance or a readoption of the emergency regulatory action (place this file number in the box marked "All Previous Related OAL Regulatory Action Number(s)");

(D) to the submission of the readoption of the emergency regulatory action (the "Emergency Number") and to the submission of the original emergency regulatory action (place these file numbers in the box marked "All Previous Related OAL Regulatory Action Numbers") if the present filing is a certificate of compliance after the readoption of an emergency regulatory action;

(10) if not already completed, the name of the agency with rulemaking authority and the agency's file number, if any.

(c) [begin underline] For [end underline] [replace capitalized letter A with a lower case a in the word all] a-All regulatory actions submitted to OAL for publication in the CCR and/or transmittal to the Secretary of State for filing [begin underline] , the agency must complete the Form 400 [end underline] [begin strikethrough] shall include the Form 400, which shall be completed [end strikethrough] as follows:

(1) [replace lower case letter w with capitalized letter W in the word when] When submitting [begin strikethrough] ~~regulations as~~ [end strikethrough] a "regular rulemaking," complete part B of the same Form 400 that was previously submitted with the notice [begin strikethrough] ~~of the proposed regulatory action,~~ [end strikethrough] ; or, if a new Form 400 is used, complete part B and enter the number OAL previously assigned to the notice in the box marked "Notice File Number."

(A) When adoptions, amendments, or repeals described in one notice of regulatory action are later submitted to OAL for review in more than one regulatory filing, [begin strikethrough] the agency shall, at the time of submission to OAL, [end strikethrough] either

1. complete part B of a [begin strikethrough] photo [end strikethrough] copy of the Form 400 submitted with the notice, or

2. complete part B of a new Form 400 and enter the number OAL previously assigned to the notice in the box marked "Notice File Number."

(2) [replace lower case letter w with capitalized letter W in the word when] When resubmitting a disapproved or withdrawn regulatory filing, complete part B of a new Form 400, and enter the number OAL previously assigned to the notice in the box marked "Notice File Number" and [begin strikethrough] enter [end strikethrough] the number OAL previously assigned to the prior submission of the regulatory action in the box marked "All Previous Related OAL Regulatory Action Number(s)."

(3) [replace lower case letter w with capitalized letter W in the word when] When submitting emergency regulations, complete part B of the Form 400.

(4) [replace lower case letter w with capitalized letter W in the word when] When submitting a Certificate of Compliance filing after the adoption of emergency regulations, complete part B of the [begin underline] same [end underline] Form 400 that was previously submitted with the notice;⁷² or, if a new Form 400 is used, [begin underline] complete part B and [end underline] enter the number OAL previously assigned to the notice in the box marked "Notice File Number" and [begin strikethrough] enter [end strikethrough] the number OAL previously assigned to the original emergency filing in the box marked "All Previous Related OAL Regulatory Action Number(s)."

(5) [replace lower case letter w with capitalized letter W in the word when] When submitting a Certificate of Compliance filing after the readoption of emergency regulations, complete part B of the [begin underline] same [end underline] Form 400 that was previously submitted with the notice;⁷² or, if a new Form 400 is used, [begin underline] complete part B and [end underline] enter the number OAL previously assigned to the notice in the box marked "Notice File Number," and [begin strikethrough] enter [end-strikethrough] the numbers OAL previously assigned to the readoption of the emergency filing and the original emergency filing in the box marked "All Previous Related OAL Regulatory Action Number(s)."

(6) [replace lower case letter w with capitalized letter W in the word when]
When submitting previously approved emergency regulations for re-adoption, complete part B of a new Form 400, and enter the number(s) OAL assigned to the original emergency filing(s) in the box marked "All Previous Related OAL Regulatory Action Number(s)."

Note: Authority cited: Section 11342.4, Government Code. Reference: Sections 11343, 11343.1, 11343.8, 11346.1 and 11347.3, Government Code.

[begin underline] Section 6.5. Electronic Submission of Regulatory Actions.

(a) For all regulatory actions submitted electronically to OAL for publication in the California Code of Regulations and/or transmittal to the Secretary of State for filing, the agency must include:

(1) Seven identical electronic files, each containing:

(A) One electronic Form 400 completed according to section 6, subsections (b) and (c), and digitally signed by the person making the certification referred to in section 6, subsection (b)(8), and

(B) One electronic copy of the certified regulation text.

(2) One electronic file containing all documentation required by law to be submitted to OAL, including, but not limited to, the following:

(A) For regular rulemakings, and certificates of compliance promulgated in accordance with Government Code section 11346.1(e), the rulemaking file described in Government Code section 11347.3(b).

(B) For emergency actions promulgated in accordance with Government Code section 11346.1, the documentation described in section 50, subsection (b).

(C) For the adoption or revision of state policy for water quality control plans, or the adoption or revision of water quality control plans and guidelines, promulgated in accordance with division 7 (commencing with section 13000) of the Water Code, the documentation described in Government Code section 11353(b)(2).

(b) The agency must submit all electronic documents described in subsection (a) in PDF format as attachments to a single email, which may not exceed 25MB in size.

(c) Electronic regulatory actions may only be submitted to OAL at ElectronicSubmissions@oal.ca.gov.

(d) Except for electronic emergency regulatory actions, OAL will consider electronic regulatory actions received after 5:00 p.m. on a business day, or at any time on a weekend or holiday, to be submitted on the following business day.

(e) OAL will consider electronic emergency regulatory actions received after 4:00 p.m. on a business day, or at any time on a weekend or holiday, to be submitted, and will post the notice of filing required by Government Code section 11349.6(b) for these actions, on the following business day.

Note: Authority cited: Section 11342.4, Government Code. Reference: Sections 11343, 11343.1, 11343.8, 11346.1, 11347.3 and 11349.6, Government Code. [end underline]

Section 50. [begin underline] Special Requirements for Submission of [end underline] [begin strikethrough] ~~Proposed~~ [end strikethrough] Emergency [begin underline] Regulatory [end underline] [add a letter s to the word action] Actions [begin strikethrough] ~~Submission.~~ [end strikethrough]

(a) [begin strikethrough] ~~State agencies submitting emergency regulations to OAL pursuant to~~ [end strikethrough] [begin underline] For all emergency regulatory actions promulgated in accordance with [end underline] Government Code section 11346.1 [begin underline] , the agency must [end underline] [begin strikethrough] ~~shall include:~~ [end strikethrough]

[begin underline] (1) Prepare the documentation described in subsection (b); and either

(2) Submit one hard copy of the documentation along with hard copies of all documents described in section 6, subsection (a); or

(3) If submitting electronically pursuant to section 6.5, provide one electronic copy of the documentation in accordance with section 6.5, subsection (a)(2). [end underline]

[begin strikethrough] (1) ~~Seven copies of the specific language of the proposed emergency regulation as set forth in section 6;~~

[begin strikethrough] (2) ~~A completed Form 400, with at least one Form 400 bearing an original signature, attached to each copy of the proposed text as set forth in section 6;~~ [end strikethrough]

[begin underline] (b) Documentation required for all emergency regulatory actions: [end underline]

[replacing the number 3 with a 1] (3) The finding of emergency required by Government Code section 11346.1(b);

[replacing the number 4 with a 2] (4) An estimate prepared in accordance with instructions adopted by the Department of Finance as required by Government Code section 11346.5(a)(6); and [begin underline] either [end underline]

[replacing the number 5 with a 3] (5)(A) A statement by the submitting agency confirming that it has complied with the requirement to provide notice of proposed rulemaking action pursuant to Government Code section 11346.1(a)(2); or

(B) A statement by the submitting agency confirming that the emergency situation addressed by the regulations clearly poses such an immediate, serious

harm that delaying action to allow notice and public comment would be inconsistent with the public interest. The statement shall include:

1. Specific facts demonstrating by substantial evidence that failure of the rulemaking agency to adopt the regulation within the time periods required for notice pursuant to Government Code section 11346.1(a)(2) and for public comment pursuant to Government Code section 11349.6(b) will likely result in serious harm to the public peace, health, safety, or general welfare; and
2. Specific facts demonstrating by substantial evidence that the immediate adoption of the proposed regulation by the rulemaking agency can be reasonably expected to prevent or significantly alleviate that serious harm.

[replacing the letter b with a letter c] (~~b~~c) OAL shall not approve any emergency regulation submitted with a subsection [replacing a5 with b3] ~~(a)(5)(b)(3)~~(B) statement that does not satisfy the requirements of [adding a letter s to the word subsection] subsections [replacing a5 with b3] ~~(a)(5)(b)(3)~~(B) 1. and 2.

Note: Authority cited: Section 11342.4, Government Code. Reference: Sections 11342.545, 11346.1 and 11349.6, Government Code.

Section 52. Readoption of Emergency Regulations.

(a) Readoption of an emergency regulation pursuant to Government Code section 11346.1(h) requires sending a notice of the proposed regulatory action pursuant to Government Code section 11346.1(a)(2).

(b) In addition to fulfilling the requirements for submission of regulatory actions described in sections 6 or 6.5 and 50, an agency requesting approval for readoption of an emergency regulation shall provide the following:

(1) A statement providing specific facts demonstrating by substantial evidence that the agency has made substantial progress and proceeded with diligence to comply with Government Code section 11346.1(e); and either

(2) A statement that the emergency circumstances are unchanged since the initial adoption or prior readoption; or

(3) An updated finding of emergency required by Government Code section 11346.1(b) to reflect circumstances that have changed since the initial adoption or prior readoption.

(c) An agency requesting approval for readoption of an emergency regulation may incorporate by reference the rulemaking record, identified by OAL file number, for the initial adoption and any prior readoption of the emergency regulation.

Note: Authority cited: Section 11342.4, Government Code. Reference: Sections 11342.545, 11346.1 and 11349.6, Government Code.

Section 100. Publication of “Changes Without Regulatory Effect.”

(a) Subject to the approval of OAL as provided in subsections (c) and (d), an agency may add to, revise or delete text published in the California Code of Regulations without complying with the rulemaking procedure specified in [replace capitalized letter A with a lower case a in the word article] ~~Article~~ Article 5 of the APA only if the change does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision. Subject to the approval of OAL, the Department of Social Services may add to, revise or delete text published in the department Manual of Policies and Procedures (MPP) without complying with the rulemaking procedure specified in [replace capitalized letter A with a lower case a in the word article] ~~Article~~ Article 5 of the APA only if the change does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of the MPP. The addition, revision or deletion is a “change without regulatory effect.” Changes without regulatory effect include, but are not limited to:

- (1) renumbering, reordering, or relocating a regulatory provision;
- (2) deleting a regulatory provision for which all statutory or constitutional authority has been repealed;
- (3) deleting a regulatory provision held invalid in a judgment that has become final, entered by a California court of competent jurisdiction, a United States District Court located in the State of California, the United States Court of Appeals for the Ninth Circuit, or the United States Supreme Court; however, OAL shall not approve any proposed change without regulatory effect if the change is based on a superior court decision which invalidated the regulatory provision solely on the grounds that the underlying statute was unconstitutional;
- (4) revising structure, syntax, cross-reference, grammar, or punctuation;
- (5) changing an “authority” or “reference” citation for a regulation; and,
- (6) making a regulatory provision consistent with a changed California statute if both of the following conditions are met:
 - (A) the regulatory provision is inconsistent with and superseded by the changed statute, and
 - (B) the adopting agency has no discretion to adopt a change which differs in substance from the one chosen.

(b) For all ~~in submitting a~~ ~~changes~~ without regulatory effect submitted to OAL for review, the agency ~~shall~~ must:

(1) Prepare a written statement explaining why the change does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision; and either

(2) Submit one hard copy of the statement along with hard copies of all documents described in section 6, subsection (a); or

(3) Submit one electronic copy of the statement along with electronic copies of all documents described in section 6.5, subsection (a)(1).

(A) The agency must submit all electronic documents described in subsection (b)(3) in PDF format as attachments to a single email, which may not exceed 25MB in size.

(B) Electronic changes without regulatory effect may only be submitted to OAL at ElectronicSubmissions@oal.ca.gov.

(C) OAL will consider electronic changes without regulatory effect received after 5:00 p.m. on a business day, or at any time on a weekend or holiday, to be submitted on the following business day. [end underline]

~~(1) submit seven copies of the regulations with an addition shown in underline or italics and a deletion shown in strike-out; and~~

~~(2) attach to each copy a completed Form 400, with at least one Form 400 bearing an original signature; and~~

~~(3) submit a written statement explaining why the change does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision.~~ [end strikethrough]

(c) OAL shall determine whether a change submitted is a change without regulatory effect within 30 working days of its receipt. OAL shall send written notification of the determination to the agency which submitted the changes.

(d) If OAL determines that the submitted change is a change without regulatory effect, OAL shall file it with the Secretary of State and have it published in the California Code of Regulations. If the change without regulatory effect is a

change to the MPP, OAL shall file the change with the Secretary of State and the Department of Social Services shall publish the change in the MPP.

Note: Authority cited: Sections 11342.4 and 11349.1 [begin strikethrough] ~~(e)~~ [end strikethrough], Government Code. Reference: Sections 11342.600, 11343.8, 11344.6 and 11346, Government Code [begin strikethrough] ; and Article III, Section 3.5, California Constitution. [end strikethrough]

[begin underline] Section 101. Digital Signature Acceptance.

(a) Prior to submitting electronic documents containing digital signatures to OAL pursuant to section 6.5 or section 100, an agency must provide the following certification by the agency head to OAL in writing:

"I, [Name], as head of [Agency name], certify that my digital signature on all electronic documents hereafter submitted to the Office of Administrative Law pursuant to California Code of Regulations, title 1, section 6.5 or section 100 is in compliance with the requirements of Government Code section 16.5, subdivision (a), and California Code of Regulations, title 2, division 7, chapter 10."

(b) If the agency head wishes to delegate their authority to submit electronic documents containing digital signatures to OAL pursuant to section 6.5 or section 100, then the written certification in subsection (a) shall include the following:

"I authorize each of the individuals named below to certify regulations on my behalf.

[List name and title of each delegate.]

I certify that each named delegate's digital signature on all electronic documents hereafter submitted to the Office of Administrative Law pursuant to California Code of Regulations, title 1, section 6.5 or section 100 is in compliance with the requirements of Government Code section 16.5, subdivision (a), and California Code of Regulations, title 2, division 7, chapter 10."

(c) The agency head must sign and date the certification provided to OAL pursuant to this section.

Note: Authority cited: Section 11342.4, Government Code. Reference: Section 11343, Government Code. [end underline]