

STATE OF CALIFORNIA

OFFICE OF ADMINISTRATIVE LAW

**SECOND READOPTION OF EMERGENCY RULEMAKING ACTION:
ELECTRONIC SUBMISSION OF NOTICES OF PROPOSED ACTION,
REGULATORY ACTIONS, AND CHANGES WITHOUT REGULATORY EFFECT**

PROPOSED REGULATION TEXT

§ 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.

(3) "Form 400" means the form entitled "Notice Publication/Regulations Submission" STD. 400 (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, 11349.3, 11349.6 and 11370, Government Code.

§ 5. Submission of Notices for Publication.

(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 to OAL:

(1) For hard-copy submissions, two copies of the Form 400 with Part A completed and two copies of the notice. If the notice is submitted pursuant to Government Code section 11346.4(a)(5), then in addition to the Notice of Proposed Action and 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.

(2) For electronic submissions, one electronic Form 400 with Part A completed and one electronic copy of the notice. If the notice is submitted pursuant to Government Code section 11346.4(a)(5), then in addition to the Notice of Proposed Action and STD. 399, the electronic submission shall also include, pursuant to Government Code section 11346.2(a) and (b), one electronic copy of the express terms of the proposed regulation and the initial statement of reasons.

(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.

(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.

(c) The Form 400 must 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 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.

§ 6. Hard-copy Submission of Regulatory Actions.

(a) For all regulatory actions submitted in hard copy to OAL for publication in the California Code of Regulations and/or transmittal to the Secretary of State for filing, the agency must include seven copies of the certified regulation text. A completed Form 400, with the wet signature of the person making the certification referred to in subsection (b)(8), must be attached to the front of one copy of the certified regulation text, and a copy of the completed and signed Form 400 must be attached to each of the remaining six copies of the certified regulation text.

(b) The completed Form 400 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. 1, sec. 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 article 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) For all regulatory actions submitted to OAL for publication in the California Code of Regulations and/or transmittal to the Secretary of State for filing, the agency must complete the Form 400 as follows:

(1) When submitting a regular rulemaking, complete part B of the same Form 400 that was previously submitted with the notice; 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, either

1. complete part B of a 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) 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 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) When submitting emergency regulations, complete part B of the Form 400.

(4) When submitting a Certificate of Compliance filing after the adoption of emergency regulations, complete part B of the same Form 400 that was previously submitted with the notice; 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" and the number OAL previously assigned to the original emergency filing in the box marked "All Previous Related OAL Regulatory Action Number(s)."

(5) When submitting a Certificate of Compliance filing after the readoption of emergency regulations, complete part B of the same Form 400 that was previously submitted with the notice; 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" and 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) When submitting previously approved emergency regulations for readoption, 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.

§ 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.

§ 50. Special Requirements for Submission of Emergency Regulatory Actions.

(a) For all emergency regulatory actions promulgated in accordance with Government Code section 11346.1, the agency must:

- (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).

(b) Documentation required for all emergency regulatory actions:

- (1) The finding of emergency required by Government Code section 11346.1(b);
- (2) An estimate prepared in accordance with instructions adopted by the Department of Finance as required by Government Code section 11346.5(a)(6); and either

(3)(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.

(c) OAL shall not approve any emergency regulation submitted with a subsection (b)(3)(B) statement that does not satisfy the requirements of subsections (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.

§ 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.

§ 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 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 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 changes without regulatory effect submitted to OAL for review, the agency 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.

(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, Government Code.

Reference: Sections 11342.600, 11343.8, 11344.6 and 11346, Government Code.

§ 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.