

STATE OF CALIFORNIA
OFFICE OF ADMINISTRATIVE LAW
INITIAL STATEMENT OF REASONS:

**ELECTRONIC SUBMISSION OF NOTICES OF PROPOSED ACTION,
REGULATORY ACTIONS, AND CHANGES WITHOUT REGULATORY EFFECT**

INTRODUCTION

The rulemaking provisions of the California Administrative Procedure Act (“APA,” Gov. Code, § 11340 *et seq.*) govern state agency rulemaking. Specifically, the APA establishes procedures with which state agencies must comply, unless exempt, to adopt regulations lawfully. Government Code section 11343, subdivisions (a) and (b), require every state agency to transmit a certified copy of every regulation adopted, amended, or repealed (except regulations that are building standards) to the Office of Administrative Law (“OAL”) for filing with the Secretary of State.

PROBLEM STATEMENT

The APA does not specify the format in which documents must be submitted to OAL. Existing regulations in title 1, division 1, chapter 1 of the California Code of Regulations (“CCR”) that require submission of hard copy (i.e., paper) documents bearing handwritten signatures were first adopted by OAL between 1986 and 1990 and have remained largely unchanged. Since that time, electronic communication has become much more prevalent, and OAL recognizes the need to update the regulations to account for technological advancements over the last three decades by allowing electronic submission of APA-related documents and information.

SPECIFIC PURPOSE OF, AND RATIONALE FOR, EACH PROPOSED AMENDMENT

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. Further, the second page of the form is being removed, as it contains a host of outdated and therefore inaccurate information and OAL no longer believes instructions for filling out the

form are necessary. The content of the first page of the Form 400 has not changed. This subsection must be amended to reflect the correct revision date.

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.

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.

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 and other electronic 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 may 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, subsection (d). The notice printing fee of \$40 per page that OAL charges to print notices other than those described in subsections (d)(1) through (d)(3) is being repealed. OAL originally charged for these publications to recover the estimated printing costs associated with them. With the current publication process, and due to technological advances, the costs to OAL associated with printing these notices are typically insignificant and no longer warrant charging this fee. Subsections (d)(1) through (d)(3) are also being repealed because they are subordinate to and only clarify subsection (d) and will therefore be unnecessary in its absence.

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 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. 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. It is necessary to specify in subsection (a)(1)(B) that an electronic Form 400 must be electronically signed to clarify that OAL will not accept submissions of regulatory actions that are electronic except for hard-copy, wet-signed forms, because allowing hybrid submissions (i.e., submissions that are part hard-copy, part electronic) would complicate OAL's intake processes. For example, it would be much more difficult to determine the submission date if part of an action was submitted electronically and the rest of the action arrived by mail many days later. Subsections (a)(1)(C) through (a)(1)(C)2. are necessary to clarify that OAL will accept either a "digital signature" or another type of "electronic signature" on the Form 400 and provide references to the statutory definitions of those terms. 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). 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. Subsection (b)(1) requires agencies to provide two emails per submission. While one email would be easier for OAL to process and track, two emails are proposed to allow agencies with larger rulemakings to take advantage of the electronic submission process. Subsections (b)(1)(A) and (b)(1)(B) describe the content of the emails, including acceptable file formats for attached documents and other information. Specifying that one email must contain only the required number of copies of the Form 400 and regulation text and the other must contain only the rulemaking record harmonizes the electronic submission process with the hard-copy submission process, which requires the rulemaking record to be provided separately from the certified copies of the Form 400 and regulation. Dividing the emails will also facilitate OAL's review process by ensuring that documents are submitted in an orderly fashion. Copies of the Form 400 must be

submitted in .pdf format because the Form 400 is only made available to agencies in that format and .pdf documents are generally simple to electronically sign. OAL is proposing to require copies of the regulation text to be submitted in .pdf format as well because documents in .pdf format are typically more difficult to manipulate or revise than documents in other formats, which is why documents are often converted to .pdf format when they are considered "final." OAL believes that this requirement will reduce the number of submissions that include an incorrect or outdated version of the regulation text or regulation text that inappropriately includes highlighted edits or comments (e.g. "redline" or "tracked changes"), and the possibility of regulation text accidentally being changed during OAL review. Regarding the electronic rulemaking record, OAL decided to allow agencies to submit documents in any commonly available file format. Though the documents described in subsection (a)(1) will be easy to provide in .pdf format, the rulemaking record described in subsection (a)(2) may include different types of documents that are more difficult to convert to .pdf format, such as spreadsheets and PowerPoint slides, and files that are not documents, such as audio and video recordings of APA-related hearings. Still, OAL must be able to access each file in the record regardless of file type. While OAL cannot change the contents of any document in an agency's rulemaking record, OAL routinely replaces hard-copy documents that are revised and authorized to be replaced by the agency during OAL's review period. OAL intends to provide the same courtesy to agencies submitting electronic records, so electronic documents and other files must not be password-protected or otherwise "locked" in a way that restricts OAL's ability to swap files in and out of the record. Subsection (b)(2) requires agencies to clearly identify both emails as part of the same submission in the subject line to help OAL staff confirm receipt of a complete regulatory action and accurately process and track all documents and information submitted as part of that action. The proposed maximum email size in subsection (b)(3) is 25MB because OAL's email system will not allow delivery of messages that exceed that limit.

Section 6.5, subsection (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 electronic regulatory actions outside of OAL's operating hours. The exception for electronic emergency regulatory actions is explained below.

Section 6.5, subsection (d). 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 (a). The last sentence of this provision is being amended to include the word, "may." This change is proposed to clarify that the changes in the non-exclusive list established in subsections (a)(1) through (a)(6) are not guaranteed or deemed to be without regulatory effect. OAL must still determine during its review of these submissions whether the proposed changes materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of the underlying provision.

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 email, file format and access, and daily submission cut-off time requirements similar to those being proposed in section 5, subsection (b)(2)(A), and section 6.5, subsections (b) and (c). 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)-(D) are necessary for the reasons described above regarding similar

proposed language in section 5, subsection (b)(2)(A), and section 6.5, subsections (b) and (c).

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.

ANTICIPATED BENEFITS

The proposed changes will provide state agencies with a straightforward, efficient, paperless process for submitting notices of proposed action, regulatory actions, and changes without regulatory effect to OAL. The proposed changes also result in more uniform usage of terminology throughout the regulations, which will improve clarity and readability and reduce the potential for confusion and misinterpretation or misapplication of the rules.

ECONOMIC IMPACT ASSESSMENT

The regulations to be adopted or amended in this action only address the procedures governing submission of APA-related documents to OAL for review and/or publication. These procedures only apply to state agencies, and the new electronic submission process established in these regulations simply offers agencies an alternative submission method, which agencies need not employ if they prefer to continue submitting APA-related documents to OAL in hard copy. As they should not increase agencies' existing workload regarding submissions or the sheer number of submissions, the proposed changes are very unlikely to affect the creation or elimination of jobs or the creation, elimination, or expansion of businesses in California. Agencies will save paper if they take advantage of the electronic submission process, which may benefit the environment. Electronic submission of documents will reduce interpersonal contact and handling of paper documents, which may lessen exposure and transmission of diseases and increase worker safety.

OTHER REQUIRED DISCLOSURES

Studies, Reports, or Documents Relied Upon (Gov. Code §11346.2(b)(3)): None.

Reasonable alternatives that would be less burdensome and equally effective (Gov. Code §11346.2(b)(4)(A)): OAL has determined that using a cloud-based document sharing platform (e.g., Dropbox, SharePoint) would be a reasonable and equally effective alternative to the proposed email-based electronic submission process. OAL believes email is the simplest, most cost-effective, and most expedient alternative at this time, but has developed a business case for the design and implementation of a cloud-based platform or portal and plans to continue pursuing that alternative after these regulations become effective.

Reasonable alternatives that would lessen the impact on small businesses (Gov. Code §11346.2(b)(4)(B)): None.

Evidence relied upon to support the initial determination that the regulation will not have a significant adverse economic impact on business (Gov. Code §11346.2(b)(5)(A)): As explained in the Economic Impact Assessment, these regulations only affect state agencies and therefore will have no economic impact on business.