

# The Notice of Proposed Rulemaking

**Requirements:** Government Code sections 11346.4, 11346.5, and title 1, California Code of Regulations, section 5. The Notice of Proposed Rulemaking (Notice) is the announcement to your regulated public about your rulemaking and is an invitation for them to participate.

## Notice Serves Four Basic Purposes:

- 1. Time:** Publication of Notice starts timelines running.
  - Begins one-year effective period for Notice.
  - Starting date for calculating public comment period of at least 45 days.
- 2. Substance:** Contents of Notice define scope of rulemaking. Specifically, the “**Informative Digest/Policy Statement Overview**,” which sets the parameters of your rulemaking.
- 3. Public Policy:** Notice fulfills goals of the APA.
  - Invites meaningful public participation.
  - First step in creating record for public and judicial review.

## The Notice is issued in 3 ways:

- 1. Publication of the Notice:** The agency must publish the Notice of Proposed Rulemaking in the California Regulatory Notice Register as prepared by the Office of Administrative Law.
- 2. Posting of the Notice:** The Notice must be posted on the agency's website, if agency has one.
- 3. Mailing of the Notice:** Who must the agency send the Notice of Proposed Rulemaking to?
  - The Notice must be sent to every person who has filed a request for notice of regulatory actions with the state agency. Agencies shall give the person the option of being notified of all proposed regulatory actions or being notified of just one or more programs of the state agency.

- In cases in which the state agency is within a state department, the Notice is mailed or delivered to the director of the department.
- The Notice must be sent to a representative number of small business enterprises or their representatives which have been identified as being affected by the proposed action. (See, GC 11346.4(a)(3) for definition of "representative.")
- When appropriate in the judgment of the state agency, the Notice is mailed to any person or group of persons whom the agency believes to be interested in the proposed action, and
- The Notice is published in the form and manner as the state agency shall prescribe.

**When** must the agency give notice?

- The agency must give at least 45 days prior to the hearing and close of the public comment period on the adoption, amendment, or repeal of a regulation.

See Government Code section 11346.4. Also see section 86, Title 1, California Code of Regulations (CCR) for instructions on how to document that notice was sent properly.

**The following are resources that are available for agencies to refer to when seeking guidance on drafting the Notice:**

- California Regulatory Notice Register published every Friday.
- Your agency's previously published Notices.
- Past published Notices of other agencies, including OAL.
- OAL's "Notice Review Checklist" and "Regular Rulemaking Checklist," which are available by contacting the OAL Reference Attorney.

**Statutes and Regulations Related to Notice of Proposed Rulemaking**

The following Government Code sections are related to the requirements for drafting and making available the Notice:

- Gov. Code, sec. 11343, sub. (e)
- Gov. Code, sec.11346.2
- Gov. Code, sec.11346.3
- Gov. Code, sec.11346.4
- Gov. Code, sec.11346.5
- Gov. Code, sec.11346.8
- Gov. Code, sec.11346.9, sub. (c)
- Gov. Code, sec. 11356

The following regulations in title 1, California Code of Regulations are related to the requirements for drafting and making available the Notice:

- Cal. Code. Regs., tit. 1, sec. 4
- Cal. Code. Regs., tit. 1, sec. 5
- Cal. Code. Regs., tit. 1, sec. 20, sub. (c)(3)
- Cal. Code. Regs., tit. 1, sec. 86

## **Publishing the Notice of Proposed Action in the California Regulatory Notice Register**

The **California Regulatory Notice Register** (Notice Register) is a weekly publication which contains agency notices of proposed action to adopt, amend, or repeal regulations. (The Notice Register also contains other information pertaining to regulatory actions.)

OAL publishes the Notice Register every Friday of the year. In order to meet the Friday publication date, agencies must submit their notices at least ten days prior to the Friday publication date, which is, by Tuesday, 5:00 p.m. of the **prior** week. Agencies can deliver hard copies to OAL or may email submissions to [NOPA@oal.ca.gov](mailto:NOPA@oal.ca.gov)

### **What to Include When Submitting a Notice for Publication:**

The notice package sent to OAL must include:

- 2 copies of the Notice of Proposed Action (only 1 copy for e-submissions)
- 2 copies of the Standard Form 400 (Fill out Part A only. Only 1 copy for e-submissions)
- 1 copy of the Initial Statement of Reasons
- 1 copy of the “express terms” (i.e., proposed text of regulation)

- 1 copy of the Fiscal Impact Statement (Std. 399 - Agency Secretary or designee signature required is required at the Notice stage; however, no Department of Finance signature is required at this stage.)

### **The Z-Number:**

OAL assigns each Notice a "Z-number."

### **The Notice Review Process:**

After receiving the Notice, OAL has three working days to review the Notice to ensure it complies with APA requirements.

### **Fixing Problems:**

If the Notice fails to meet APA requirements, OAL will contact the agency to try to resolve any problems in time for the requested publication date. OAL sends all notices to the publisher by 5:00 p.m. on Friday of the week before the Friday publication date.

### **Changes:**

If the agency decides on its own to make changes to the Notice, it may contact OAL to make the changes or it may bring them in. The agency must submit any changes to OAL by Thursday or Friday morning of the week preceding the publication date to meet the publishing deadline.

OAL recommends that agencies wait until OAL approves the Notice submission before copying and mailing pursuant to Government Code, section 11346.4, subdivision (a).

### **End of Process:**

If OAL approves the Notice submission, OAL will publish the Notice in the California Regulatory Notice Register. If the agency requests a delayed publication date, OAL will still review the Notice within three days of submission but will hold the Notice until the requested publication date.

The Notice Register is available online. You can find the link at the OAL home page ([www.oal.ca.gov](http://www.oal.ca.gov)).

**Mailing Your Notice:**

Mail your notice by the Friday publication date. Also, post your notice on your website. The APA only requires that you send out your Notice. Agencies are not required to send the Initial Statement of Reasons (ISOR) or text with the Notice. This is because the Notice contains information on how people can get a copy of your ISOR or text either from your website or office.