

**STATE OF CALIFORNIA
OFFICE OF ADMINISTRATIVE LAW**

TEXT OF REGULATIONS AS ORIGINALLY PROPOSED

Title 1. General Provisions

Division 1. Office of Administrative Law

Chapter 1. Review of Proposed Regulations

Article 2. Criteria Applied in the Review of Proposed Regulations

Section 84. Incorporation of Prior Files Rulemaking Records by Reference.

In re-submitting a regulation to OAL ~~a regulation~~ previously withdrawn or disapproved ~~in accordance with either~~ pursuant to Government Code section 11349.3 or 11349.4, an agency may incorporate by reference all or any part of the ~~withdrawn or disapproved file~~ prior rulemaking record. To incorporate items from such a prior rulemaking record files, the agency shall ~~submit a transmittal memo~~ include in the table of contents required by Government Code section 11347.3(b)(12) for the resubmittal, a statement identifying the prior rulemaking action file by its previous related OAL action number ~~date of submission~~ and specifying ~~that~~ what items from ~~portion of the prior~~ rulemaking record ~~file~~ that is are incorporated by reference.

Note: Authority cited: Sections 11342.4 and 11349.1~~(e)~~, Government Code.

Reference: Sections 11347.3(b) and 11349.4, Government Code.

Section 85. Notice by Electronic Communication.

(a) A person shall be deemed to have expressly indicated a willingness to receive a notice by means of electronic communication, within the meaning of Government Code section 11340.85(b)(3), if:

(1) The person has specifically requested that the agency deliver its notice(s) by means of electronic communication;

(2) The person has submitted a written comment, via electronic communication, to the agency in connection with a particular rulemaking action and has not otherwise requested that the agency deliver its notice(s) via non-electronic communication; or

(3) The person, via electronic communication, submits a request to receive notices from the agency and does not request that notices be delivered by non-electronic communication.

(b) The method of the electronic notice provided by the agency must be the same as the method specified or used by the person described in subsection (a). For example, a comment received by email represents an express willingness to receive notices by email and not a different electronic format.

Note: Authority cited: Sections 11342.4 and 11349.1, Government Code.
Reference: Section 11340.85, Government Code.

Section 86. Statement of Mailing Notice.

(a) The rulemaking record shall contain a statement confirming that the agency complied with the provisions of Government Code §section 11346.4(a)(1) through (4) and (6) regarding the mailing and posting of notice of proposed action at least 45 days prior to the public hearing, if any, and close of the public comment period, and stating the method(s) of delivery and the date(s) upon which the notice was mailed and posted on the agency's website, if the agency has a website. This section is not intended to require an agency to provide a copy of its mailing list to support the statement.

(b) For purposes of this section, the term "mailing" includes delivery by means of electronic communication pursuant to Government Code section 11340.85(b)(3).

Note: Authority cited: Sections 11342.4 and 11349.1(~~e~~), Government Code.
Reference: Section 11346.4, Government Code.

Section 87. Notice of Scheduled, Continued, or Postponed Hearings.

(a) If a public hearing is scheduled by request or postponed pursuant to Government Code section 11346.8(a) or (b), respectively, the agency shall send a notice stating the time, date, and place of the hearing to:

(1) all persons who filed a request for notice of regulatory actions as specified in Government Code section 11346.4(a)(1); and

(2) all persons whose comments were received by the agency during the public comment period.

(b) If a public hearing commenced and is continued to a subsequent time pursuant to Government Code section 11346.8(b), the final statement of reasons shall include a statement explaining how and when the agency provided notice of the time, date, and place of the resumed hearing.

(c) The rulemaking record shall contain the notice(s) of hearing and a statement confirming that the agency complied with the requirements of subsection (a) of this section.

Note: Authority cited: Sections 11342.4 and 11349.1, Government Code.

Reference: Sections 11346.8 and 11347.3, Government Code.

Section 88. Method of Electronic Notice.

(a) An agency may provide notice exclusively by means of electronic communication only if the agency's entire distribution list has requested to receive notices electronically and the agency complies with the requirements of section 85.

(b) When providing notice of any APA-related document by electronic communication, an agency shall:

(1) Transmit the complete content of the actual document(s) in the body of the electronic communication; or

(2) Include the actual document(s) as electronic file(s) attached to the electronic communication; or

(3) Provide a hyperlink or URL in the body of the electronic communication that redirects the person:

(A) directly to the actual document(s); or

(B) to an internet web page containing clearly identified hyperlinks that redirect the person directly to the actual document(s) for that rulemaking action.

Note: Authority cited: Sections 11342.4 and 11349.1, Government Code.

Reference: Sections 11340.85, 11346.1, 11346.4, 11346.8 and 11347.1, Government Code.