

STATE OF CALIFORNIA
OFFICE OF ADMINISTRATIVE LAW
FIRST ADDENDUM TO THE INITIAL STATEMENT OF REASONS
ESUBMISSION OF DOCUMENTS TO OAL: ADOPTION OF SECTION 4;
AMENDMENT OF SECTIONS 4 [renumbered to 3], 5, 6, 6.5, 20, 50, AND
100

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 11346.2 requires each agency submit to the Office of Administrative Law ("OAL") the notice of proposed action and related documents for publication of the notice in the California Regulatory Notice Register. 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(a) and (b), require every state agency to transmit a certified copy of every regulation adopted, amended, or repealed (except regulations that are building standards) to OAL for filing with the Secretary of State.

This document addends without superseding the information provided in the Initial Statement of Reasons for this rulemaking action.

PROBLEM STATEMENT

The APA does not specify how documents must be submitted to OAL. Existing regulations in title 1, division 1, chapter 1 of the California Code of Regulations ("CCR") require submission of documents either in hard-copy (i.e., paper) or electronically via email. OAL's existing regulations regarding the electronic submission of documents are limited due to the maximum file size permitted per email. Additionally, agencies routinely neglect to submit copies of any documents incorporated by reference when submitting documents for publication of the notice in the California Regulatory Notice Register.

**SPECIFIC PURPOSE OF, AND RATIONALE FOR, EACH PROPOSED AMENDMENT
MADE DURING THIS 15-DAY NOTICE**

Section 4, subsection (b). Subsection (b) is further amended to clarify that agencies are not required to submit multiple requests for access to the Portal for the same individuals. Once an agency staff member has access to the Portal, they will retain that access until it is revoked by the agency. This change is

necessary because agencies regularly use the same staff members to submit actions to OAL and requiring those staff members to re-request access to the Portal each time they need to submit an action would be time-consuming without creating additional security for the portal. Moreover, retaining access to the portal is necessary because the agency staff members who submit the original action to OAL are also often responsible for handling the submission of additional documents to OAL and for downloading the returned documents at the end of OAL's review; if access were revoked after the original submission then agencies would need to re-request access after each step. This section is also amended to clarify that requests to add additional staff to the Portal or remove existing staff's access to the Portal can be submitted via email to ElectronicSubmissions@oal.ca.gov. This is necessary to funnel all such requests to the same place so that OAL may efficiently process them. Finally, this section is amended to permit OAL to remove an agency staff member's access to the Portal when that agency staff member is no longer employed by that agency. This is necessary to prevent agencies' prior staff members from accessing portions of the Portal which are reserved for current staff members of that agency.

Section 4, subsection (d). This subsection is further amended to state that a Microsoft account is required to access the Portal. This is necessary because OAL's systems, and the IT systems at the Department of General Services which underly OAL's systems, are all based on Microsoft's platform. No other type of provider account would be compatible with the Portal. Moreover, creating an account is necessary to protect the security of the Portal and to ensure that only authorized users are submitting documents through the Portal. For users of the Portal with existing Microsoft accounts which already require multifactor authentication, no change will be needed; this applies to substantially all agency staff in the State of California. The vast majority of California state workers already have Microsoft accounts which require the use of multifactor authentication. For the rare agencies which have Microsoft accounts but don't already use multifactor authentication, they may use any of the multifactor authentication methods permitted by their Microsoft account. For the very rare state agencies which do not already have a Microsoft account, creating one is free.

Section 5, subsection (b)(2)(A). Subsection (b)(2)(A) is further amended so that agencies may submit the documents accompanying their NOPA submissions in .docx format. OAL's commenters state that this is necessary because it allows agencies to more easily post their materials to the internet in compliance with the ADA without sacrificing OAL's ability to process the documents. The Form 400 is still required to be submitted in .pdf format so that OAL can maintain the formatting, accuracy, and signature requirements of the Form 400.

Section 5, subsection (b)(2)(C)1. This subsection is further amended to provide that OAL will email the time stamped Form 400 to the agency contact listed on the Form 400 in addition to the email address of the agency staff member who uploaded the documents to the Portal. This is necessary so that agency staff are made aware of when documents are submitted to OAL in the event that the agency contact on the Form 400 is a different individual than the agency staff who uploaded the documents. This change was made in response to comments from OAL's regulated public.

Section 5, subsection (d)(4). This subsection is further amended to increase the timeframe for agencies to download documents returned to them from 15 working days to 45 calendar days. This is necessary to provide agencies with additional time to download the documents in case the agency staff member responsible is unavailable. Forty-five calendar days were selected per commenter request and because this provides agencies several additional weeks in case multiple agency staff members are unavailable to download the documents.

Section 6, subsections (a)(3)(C). Subsection (a)(3)(C) is further amended to replace the phrase, "the adoption or revision of state policy for water quality control plans, or the adoption or revision of water quality control plans and guidelines," with the phrase "actions subject to Government Code section 11353". This is necessary to alleviate potential misalignment of the regulations with the statutory language from CA GOVT § 11353(a) which reads, "Except as provided in subdivision (b), this chapter does not apply to the adoption or revision of state policy for water quality control and the adoption or revision of water quality control plans and guidelines pursuant to Division 7 (commencing with Section 13000) of the Water Code."

Section 6.5, subsections (a)(1), (a)(1)(A), and (a)(1)(B). These subsections are further amended to allow agencies the option to submit regulatory text to OAL for review in .docx format while retaining the requirement that agencies must submit the Form 400 in .pdf format. Commenters state that this additional flexibility is necessary to allow agencies greater ease in posting the regulatory text to the internet in compliance with the ADA while still maintaining the formatting, accuracy, and signature requirements of the Form 400.

Section 6.5, subsections (a)(1)(C)1. and 2. These subsections are moved within the paragraph hierarchy to better reflect that the requirements of these paragraphs are not part of the documents required by paragraph (a). No substantive change is intended by this movement.

Section 6.5, subsection (a)(2)(C). This subsection is further amended to replace the phrase, "the adoption or revision of state policy for water quality control

plans, or the adoption or revision of water quality control plans and guidelines," with the phrase "actions subject to Government Code section 11353". This is necessary to alleviate potential misalignment of the regulations with the statutory language from CA GOVT § 11353(a) which reads, "Except as provided in subdivision (b), this chapter does not apply to the adoption or revision of state policy for water quality control and the adoption or revision of water quality control plans and guidelines pursuant to Division 7 (commencing with Section 13000) of the Water Code."

Section 6.5, subsection (b)(2)(A). This subsection is further amended to include the .png format in the non-exhaustive list of file formats that are explicitly permitted. This change is necessary to clarify that the .png format is a "commonly available file format". This change was made in response to a commenter's request.

Section 6.5, subsection (e). This subsection is further amended to provide that OAL will email the time stamped Form 400 to the agency contact listed on the Form 400 in addition to the email address of the agency staff member who uploaded the documents to the Portal. This is necessary so that agency staff are made aware of when documents are submitted to OAL in the event that the agency contact on the Form 400 is a different individual than the agency staff who uploaded the documents. This subsection is also further amended to provide that OAL will delete the folder created pursuant to paragraph (b)(1) of this section after moving the files out of the "Submission of Actions" folder. This is necessary to prevent an issue where agencies may submit multiple rulemakings with the same name and be prevented from submission by the requirements of paragraph (b)(1) of this section.

Section 6.5, subsection (f)(3). This subsection is further amended to increase the timeframe for agencies to download documents returned to them from 15 working days to 45 calendar days. This is necessary to provide agencies with additional time to download the documents in case the agency staff member responsible is unavailable. Forty-five calendar days were selected per commenter request and because this provides agencies several additional weeks in case multiple agency staff members are unavailable to download the documents.

Section 6.5, subsection (g)(3). This subsection is further amended to increase the timeframe for agencies to download documents returned to them from 15 working days to 45 calendar days. This is necessary to provide agencies with additional time to download the documents in case the agency staff member responsible is unavailable. Forty-five calendar days were selected per commenter request and because this provides agencies several additional

weeks in case multiple agency staff members are unavailable to download the documents.

Section 100, subsection (b)(3)(B)1. This subsection is further amended to provide that OAL will email the time stamped Form 400 to the agency contact listed on the Form 400 in addition to the email address of the agency staff member who uploaded the documents to the Portal. This is necessary so that agency staff are made aware of when documents are submitted to OAL in the event that the agency contact on the Form 400 is a different individual than the agency staff who uploaded the documents. This subsection is also further amended to provide that OAL will delete the folder created pursuant to paragraph (b)(1) of section 6.5 after moving the files out of the "Submission of Actions" folder. This is necessary to prevent an issue where agencies may submit multiple rulemakings with the same name and be prevented from submission by the requirements of paragraph (b)(1) of section 6.5.

Section 100, subsections (d)(1)(C). This subsection is further amended to increase the timeframe for agencies to download documents returned to them from 15 working days to 45 calendar days. This is necessary to provide agencies with additional time to download the documents in case the agency staff member responsible is unavailable. Forty-five calendar days were selected per commenter request and because this provides agencies several additional weeks in case multiple agency staff members are unavailable to download the documents.