

**STATE OF CALIFORNIA
OFFICE OF ADMINISTRATIVE LAW
300 CAPITOL MALL, SUITE 1250
SACRAMENTO, CA 95814**

**TITLE 1, CALIFORNIA CODE OF REGULATIONS
SUBMISSION OF DOCUMENTS TO OAL: ADOPTION OF SECTION 4;
AMENDMENT OF SECTIONS 4 [renumbered to 3], 5, 6, 6.5, 20, 50, AND
100**

PROPOSED TEXT

Proposed 45-day changes are shown in single underline and ~~single strikeout~~.
Proposed 15-day changes are shown in double underline and ~~double strikeout~~.

§ 34. Determination of Effect on Small Business.

NOTE: Authority cited: Sections 11342.4 and 11349.1~~(c)~~, Government Code.
Reference: Sections 11340(g), 11342.610 and 11346.4(a)(3), Government Code.

§ 4. OAL eSubmissions Portal.

(a) A state agency may submit documents electronically to OAL using the OAL eSubmissions Portal, as permitted by sections 5, 6.5, 50, and 100. The OAL eSubmissions Portal is accessed at <https://cadgs.sharepoint.com/sites/OAL-eSubmissions>.

(b) In order to submit documents electronically using the OAL eSubmissions Portal, an agency must submit a request for access to OAL via email at ElectronicSubmissions@oal.ca.gov. The request must include the name(s) and email address(es) of any agency staff who may submit documents electronically on behalf of the agency pursuant to subsection (a). Agencies may submit additional requests to add or remove agency staff who may submit documents electronically on behalf of the agency via email at ElectronicSubmissions@oal.ca.gov. Once granted access to the OAL eSubmissions Portal, agency staff will retain access until OAL receives a request from the agency to remove that agency staff's access or that agency staff member is no longer employed by that agency.

(c) After a request for access is received by OAL, OAL will approve the request for access if the request complies with subsection (b) or deny the request for access if the request does not comply with subsection (b). OAL shall approve or deny a request for access within three (3) working days of receipt of the request.

(1) Following OAL's approval of a request for access, the email address(es) identified in the request will be sent an email notifying them that they have been given permission to access the agency's designated document library of the OAL eSubmissions Portal.

(2) If a request for access is denied by OAL, the email address(es) identified in the request will be sent an email indicating the request has been denied and providing the reason(s) for the denial.

(d) Agency staff must have a Microsoft account with multi-factor authentication enabled to access and use the OAL eSubmissions Portal. ~~Users of the OAL eSubmission Portal must provide a phone number or email address to meet the multifactor authentication requirements.~~

NOTE: Authority cited: Section 11342.4, Government Code. Reference: Sections 11343, 11343.1, 11343.8, 11344.1, 11346.1 and 11346.2, 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, including each document incorporated by reference (if any), 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, including each document incorporated by reference (if any), and the initial statement of reasons.

(A) The agency must submit all electronic documents described in subsection (b)(2) in .pdf or .docx format; however, the Form 400 must be submitted in .pdf format, as attachments to a single email, which may not exceed 25MB in size.

(B) Electronic notices and any required documents from subsections (b)(1) and (2) may only be submitted to OAL at NOPA@oal.ca.gov, by uploading the documents to the agency's designated document library of the OAL eSubmissions Portal.

1. Before uploading any documents, the agency staff person must create a new folder in the "Submission of Notices" folder. The name of the new folder must match the subject of the notice listed in section A.1. of the Form 400 and must be different from the names of existing folders.

2. After creating the new folder, all documents required pursuant to subsection (b)(2) must be uploaded to the new folder. The file name of each document must be consistent with the title of the document.

3. Once all required documents are uploaded to the folder referenced in subsection (b)(2)(B)1., the agency must email NOPA@oal.ca.gov. That email must state, "All required documents have been uploaded to the folder titled [title] in the Submission of Notices folder. We understand that after sending this email no additional documents may be added to the folder, no documents may be deleted from the folder, and no changes may be made to any document within the folder." OAL will consider the electronic submission to be submitted when OAL receives this email and will stamp it as submitted with that date.

4. After sending the email required by subsection (b)(2)(B)3., the agency shall not add, delete, or modify documents in the folder. If any of these conditions are violated, OAL will reject the notice submission.

(C) OAL will consider electronic notices received after 5:00 p.m. on a workingbusiness day, or at any time on a weekend or holiday, to be submitted on the following workingbusiness day.

1. Within one working day of electronic receipt of all required notice documents, OAL will move the documents from the "Submission of Notices" folder and email a time-stamped Form 400 that includes the assigned notice file

number to the email address used to upload the documents and, if provided by the agency, the email address of the agency contact listed on the Form 400.

(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) 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 ~~working~~business days to correct any deficiencies. If the deficiencies are not corrected by agreement between OAL and the agency within the three ~~working~~business-day period, OAL shall promptly return the notice to the agency with a letter explaining the reasons for rejecting the notice submission~~disapproval~~.

(1) An electronically-submitted notice of proposed regulatory action that must be returned to the agency pursuant to subsections (b)(2)(B)4. and (d) will be transmitted to the agency by uploading the rejected notice submission, including the notice of proposed action and any related documents, to the "Rejected Submissions" folder of the agency's designated document library of the OAL eSubmissions Portal.

(2) OAL will upload the rejected notice submission to a folder with a name matching the subject of the regulations listed in section A.1. of the Form 400.

(3) After uploading the rejected notice submission to the "Rejected Submissions" folder, OAL will send an email to the email address used to upload the notice documents indicating the rejected notice submission is ready to be downloaded by the agency.

(4) The agency must download the rejected notice submission within ~~fifteen working~~ forty-five calendar days of notification by OAL, after which OAL will delete the rejected notice submission from the "Rejected Submissions" folder.

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 ~~three~~:

(1) Three copies of the certified regulation text, including each document incorporated by reference (if any).

(2) 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 two copies of the certified regulation text described in subsection (a)(1).

(3) One hard-copy record containing paper copies of all documents and information required by law to be submitted to OAL, including, but not limited to, the following:

(A) For regular rulemaking actions, and certificate of compliance actions 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 actions subject to Government Code section 11353~~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 documents and information described in Government Code section 11353(b)(2).~~

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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) One electronic file containing the following documents ~~in .pdf format~~:

(A) One electronic copy of the certified regulation text, including each document incorporated by reference (if any), in .pdf or .docx format and

(B) One electronic Form 400 in .pdf format completed according to section 6, subsections (b) and (c), and electronically signed by the person making the certification referred to in section 6, subsection (b)(8).

~~(C)~~ 1. For purposes of this regulation, a person may “electronically sign” the Form 400 with:

~~1a.~~ a. A digital signature, as defined in Government Code section 16.5(d), or

~~2b.~~ b. An electronic signature, as defined in Civil Code section 1633.2(h).

(2) One electronic record containing all documents and information required by law to be submitted to OAL, including, but not limited to, the following:

(A) For regular rulemaking actions, and certificate of compliance actions 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 actions subject to Government Code section 11353 ~~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 documents and information described in Government Code section 11353(b)(2).

(b) The agency must submit all electronic documents and information described in subsection (a) to OAL by email at ElectronicSubmissions@oal.ca.gov, uploading the required documents to the "Submission of Actions" folder in the agency's designated document library of the OAL eSubmissions Portal.

(1) Before uploading any documents, agency staff must create a new folder in the "Submission of Actions" folder. The name of the new folder must match the subject of the regulations listed in section B.1a. of the Form 400 and must be different from the names of existing folders. In this folder, agency staff must upload the ~~pdf~~ file required by subsection (a)(1).

(2) Within the new folder created pursuant to subsection (b)(1), agency staff must create an additional folder named "Rulemaking Record". In the folder named "Rulemaking Record," agency staff must upload the electronic record required by subsection (a)(2).

(A) The documents and information comprising the record may be in any commonly available file format (e.g., .pdf, .docx, .xlsx, .jpg, .png, .mp4). OAL's access to each document or other file in the electronic record may not be restricted via password protection or any other method.

(B) If the record is submitted in multiple files, each file or folder must be named in a manner consistent with its identification in the Table of Contents.

(3) Once all required documents are uploaded to the folder referenced in subsection (b)(1), the agency must email ElectronicSubmissions@oal.ca.gov. That email must state, "All required documents have been uploaded to the folder titled [title] in the Submission of Actions folder. We understand that after sending this email no additional documents may be added to the folder, no documents may be deleted from the folder, and no changes may be made to any document within the folder." OAL will consider the electronic submission to be submitted when OAL receives this email.

(4) After sending the email required by subsection (b)(2)(B)3., the agency shall not add, delete, or modify documents in the folder. If any of these conditions are violated, OAL will reject the electronic submission.

(1) Each submission must include two emails as follows:

~~(A) The first email must include the file described in subsection (a)(1) as an attachment in .pdf format.~~

~~(B) The second email must include all documents and information comprising the electronic record described in subsection (a)(2) as one or more attachments. The documents and information comprising the record may be in any commonly available file format (e.g., .pdf, .docx, .xlsx, .jpg, .mp4). OAL's access to each document or other file in the electronic record may not be restricted via password protection or any other method.~~

~~(2) Both emails must be clearly identified in the subject line as part of the same regulatory action.~~

~~(3) Neither email may exceed 25MB in size.~~

(c) Except for electronic emergency regulatory actions, OAL will consider electronic regulatory actions received after 5:00 p.m. on a workingbusiness day, or at any time on a weekend or holiday, to be submitted on the following workingbusiness day.

(d) OAL will consider electronic emergency regulatory actions received after 4:00 p.m. on a workingbusiness 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 workingbusiness day.

(e) Within one working day of electronic receipt of the regulatory action, OAL will move the documents from the "Submission of Actions" folder and email a time-stamped Form 400 that includes the assigned regulatory action number to the email address used to upload the documents and, if provided by the agency, the email address of the agency contact listed on the Form 400. After moving the documents from the "Submission of Actions" folder, OAL will delete the folder created pursuant to paragraph (b)(1) of this section.

(f) After OAL has taken action on the submission, OAL will return the regulatory text and rulemaking record to the agency by uploading the documents to the "Returned Actions" folder of the agency's designated document library of the OAL eSubmissions Portal.

(1) OAL will upload the returned submission to a folder with a name matching the subject of the regulations listed in section B.1a. of the Form 400.

(2) After uploading the returned submission to the "Returned Actions" folder, OAL will send an email to the email address used to upload the submission indicating the documents are ready to be downloaded by the agency.

(3) The agency must download the returned documents within ~~fifteen working~~ forty-five calendar days of notification by OAL, after which OAL will delete the documents from the "Returned Actions" folder.

(g) OAL will return electronically submitted regulatory actions that must be returned to the agency pursuant to Government Code section 11349.1(d), (f), or (g) to the agency by uploading the regulatory action to the "Rejected Submissions" folder of the agency's designated document library of the OAL eSubmissions Portal.

(1) OAL will upload the rejected submission to a folder with a name matching the subject of the regulations listed in section B.1a. of the Form 400.

(2) After uploading the rejected submission to the "Rejected Submissions" folder, OAL will send an email to the email address used to upload the submission indicating the rejected submission is ready to be downloaded by the agency.

(3) The agency must download the returned rejected submission within ~~fifteen working~~ forty-five calendar days of notification by OAL, after which OAL will delete the rejected submission from the "Rejected Submissions" folder.

NOTE: Authority cited: Section 11342.4, Government Code. Reference: Sections 11343, 11343.1, 11343.8, 11346.1, 11347.3, 11349.1 and 11349.6, Government Code.

§ 20. "Incorporation by Reference."

(a) "Incorporation by reference" means the method whereby a regulation printed in the California Code of Regulations makes provisions of another document part of that regulation by reference to the other document.

(b) Material proposed for "incorporation by reference" shall be reviewed in accordance with procedures and standards for a regulation published in the California Code of Regulations. Except as otherwise specified in section 11 of these regulations, OAL shall not review material proposed for "incorporation by reference" for compliance with the applicable standards of Government Code section 11349.1 when a California statute or other applicable law specifically requires the adoption or enforcement of the incorporated material by the rulemaking agency.

(c) An agency may "incorporate by reference" only if the following conditions are met:

(1) The agency demonstrates in the final statement of reasons that it would be cumbersome, unduly expensive, or otherwise impractical to publish the document in the California Code of Regulations.

(2) The agency demonstrates in the final statement of reasons that the document was made available upon request directly from the agency, or was reasonably available to the affected public from a commonly known or specified source. In cases where the document was not available from a commonly known source and could not be obtained from the agency, the regulation shall specify how a copy of the document may be obtained.

(3) The informative digest in the notice of proposed action clearly identifies the document to be incorporated by title and date of publication or issuance. If, in accordance with Government Code section 11346.8(c), the agency changes the originally proposed regulatory action or informative digest to include the incorporation of a document by reference, the document shall be clearly identified by title and date of publication or issuance in the notice required by section 44 of these regulations.

(4) The regulation text states that the document is incorporated by reference and identifies the document by title and date of publication or issuance. Where an authorizing California statute or other applicable law requires the adoption or enforcement of the incorporated provisions of the document as well as any subsequent amendments thereto, no specific date is required.

(5) The regulation text specifies which portions of the document are being incorporated by reference.

~~(d) If the document is a formal publication reasonably available from a commonly known or identified source, the agency need not provide six duplicate copies of the document under Government Code section 11343.~~

~~(e)~~ Where a regulation which incorporates a document by reference is approved by OAL and filed with the Secretary of State, the document so incorporated shall be deemed to be a regulation subject to all provisions of the APA.

NOTE: Authority cited: Section 11342.4, Government Code. Reference: Sections 11343, 11344, 11344.6, 11346.2, 11346.4, 11346.5 and 11346.8, 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

(2A) Submit one hard copy of the documentation along with hard copies of all documents described in section 6, subsection (a); or

(3B) Submit one electronic copy of the documentation along with electronic copies of all documents described in section 6.5, subsection (a)(1).

1. Electronic submissions must be submitted in compliance with section 6.5, subsection (b).

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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 may 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) to OAL in accordance with section 6.5, subsection (b). ~~by email at ElectronicSubmissions@oal.ca.gov. Each submission must include two emails as follows:~~

~~1. The first email must include the documents described in section 6.5, subsection (a)(1), as attachments. The documents must be in .pdf format.~~

~~2. The second email must include the statement described in subsection (b)(1) as an attachment. The statement must be in .pdf format. OAL's access to the statement may not be restricted via password protection or any other method.~~

~~(B) Both emails must be clearly identified in the subject line as part of the same change without regulatory effect.~~

~~(C) Neither email may exceed 25MB in size.~~

~~(D)~~ OAL will consider electronic changes without regulatory effect received after 5:00 p.m. on a workingbusiness day, or at any time on a weekend or holiday, to be submitted on the following workingbusiness day.

1. Within one working day of electronic receipt of the submission, OAL will move the documents from the "Submission of Actions" folder and email a time-stamped Form 400 that includes the assigned regulatory action number to the email address used to upload the documents and, if provided by the agency, the email address of the agency contact listed on the Form 400. After moving the documents from the "Submission of Actions" folder, OAL will delete the folder created pursuant to paragraph (b)(1) of section 6.5.

(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.

(1) After OAL has taken action on the submission, OAL will return the regulatory text and written statement to the agency by uploading the documents to the "Returned Actions" folder of the agency's designated document library of the OAL eSubmissions Portal.

(A) OAL will upload the documents to a folder with a name matching the subject of the regulations listed in section B.1 a. of the Form 400.

(B) After uploading the documents to the "Returned Actions" folder, OAL will send an email to the email address used to upload the submission indicating the documents are ready to be downloaded by the agency.

(C) The agency must download the returned documents within ~~fifteen working~~ forty-five calendar days of notification by OAL, after which OAL will delete the documents from the "Returned Actions" folder.

NOTE: Authority cited: Sections 11342.4 and 11349.1, Government Code.
Reference: Sections 11342.600, 11343.8, 11344.6 and 11346, Government Code.