

**State of California
Office of Administrative Law**

INITIAL STATEMENT OF REASONS

STANDARDS FOR FILE & PRINT AND PRINT ONLY ACTIONS

ADOPTION OF SECTION 110

AMENDMENT OF SECTIONS 1, 6, AND 14

PROBLEM STATEMENT

The Administrative Procedure Act (APA), Government Code section 11340 et seq., establishes rulemaking requirements for the adoption, amendment, or repeal of regulations by state agencies and for the review of those rulemaking actions by OAL. The APA also charges OAL with the official compilation, printing, and publication of regulations in the CCR.

Some rulemaking actions are wholly or partially exempt from the rulemaking provisions of the APA. Generally applicable exemptions to the APA are specified in Government Code section 11340.9 (i.e., general exemptions) and exemptions specific to a particular state agency may be found in a state agency's governing statutes (i.e., special exemptions). General exemptions exempt the rulemaking agency from compliance with the APA. Special exemptions may exempt the rulemaking agency from compliance with some or all of the APA. Special exemptions may also require compliance with the APA but may exempt an agency's rulemaking action from review by OAL, from filing with the Secretary of State, and/or from publication in the CCR.

Government Code section 11343.8 provides that a state agency may request OAL file with the Secretary of State and publish in such manner as OAL believes proper, any regulation or order of repeal of a regulation not required to be filed with the Secretary of State. With respect to these requests for OAL to file a wholly or partially exempt action with the Secretary of State and/or print the regulation or order of repeal of a regulation in the CCR, further clarification is needed to aid OAL's review of these filings.

Rulemaking agencies sometimes submit actions to OAL that are wholly or partially exempt from the APA without documenting how the action is exempt or demonstrating that it would be proper for OAL to publish the proposed changes in the CCR pursuant to Government Code section 11343.8. This proposed rulemaking action

seeks to implement, interpret, and make specific Government Code section 11343.8 in order to clarify when an action may be submitted to OAL as either a File and Print or Print Only action. This proposed rulemaking action is necessary to clarify the documents to be submitted in connection with File and Print and Print Only actions in order to facilitate OAL's timely review of these actions. Furthermore, this action clarifies the time period for OAL's review of the aforementioned actions, elaborates upon how OAL will evaluate these filings, and articulates the notification to be provided to the rulemaking agency.

ANTICIPATED BENEFITS

The changes proposed in this rulemaking action will help to facilitate efficient and timely OAL review of File and Print and Print Only actions.

Pursuant to Government Code section 11346.2(b)(1), OAL does not anticipate any benefits to the protection of public health and safety, worker safety, or the environment, the prevention of discrimination, or the promotion of fairness or social equity, as a result of this proposed rulemaking action.

PURPOSE AND RATIONALE FOR EACH PROPOSAL

Subsection (a)(2) of Section 1 of Title 1 of the CCR.

Purpose: OAL proposes to adopt a definition for "CCR."

Rationale: OAL's existing regulations contain numerous references to the "California Code of Regulations." In an effort to streamline OAL's regulations and utilize the commonly-used acronym "CCR" in its regulations, OAL proposes to adopt a definition for "CCR" so it is clear which publication is referenced throughout OAL's regulations.

Subsections (a)(2) through (5) of Section 1 of Title 1 of the CCR.

Purpose: OAL proposes to amend the existing subsection designations for existing subsections (a)(2) through (a)(5).

Rationale: The proposed nonsubstantive changes maintain a consistent hierarchy of subsections within section 1.

Subsection (a)(4) of Section 1 of Title 1 of the CCR.

Purpose: OAL proposes to adopt a definition for the term "File and Print" to describe the three different scenarios in which a rulemaking agency may request that OAL "file" regulation(s) with the Secretary of State and/or "print" regulation(s) in the CCR.

Rationale: Government Code section 11343.8 provides that a rulemaking agency may request that OAL file with the Secretary of State and publish (i.e., “print”) in such manner as OAL believes proper, any regulation or order of repeal of a regulation not required to be filed with the Secretary of State. These filings are colloquially known as “File and Print” actions because the rulemaking agency is requesting that OAL “file” the regulation(s) with the Secretary of State and “print” the regulation(s) in the CCR.

There are other rulemaking actions required to be adopted pursuant to the APA, filed with the Secretary of State, and printed in the CCR, but that OAL is exempted by statute from reviewing. In this situation, a rulemaking agency will submit the rulemaking action to OAL for filing with the Secretary of State and printing in the CCR. These filings are also colloquially known as “File and Print” actions because the rulemaking agency is requesting that OAL “file” the regulation(s) with the Secretary of State and “print” the regulation(s) in the CCR.

There are also agency-specific statutes that specify the adoption of regulations is exempt from the APA, but that require the submittal of the action to OAL for filing with the Secretary of State and/or printing in the CCR. Again, these filings are also colloquially known as “File and Print” actions because the rulemaking agency is requesting that OAL “file” the regulation(s) with the Secretary of State and/or “print” the regulation(s) in the CCR.

OAL proposes to adopt a definition for “File and Print” in order to clarify the circumstances under which an action may be submitted to OAL as a File and Print action. This definition, when read in conjunction with the proposed definition for “Print Only,” clearly distinguishes which type of filing is appropriate depending upon the circumstances at issue.

Subsection (a)(7) of Section 1 of Title 1 of the CCR.

Purpose: OAL proposes to adopt a definition for the term “Print Only” to describe the scenario in which a rulemaking agency may request that OAL “print” regulation(s) in the CCR after the rulemaking agency filed the regulation(s) with the Secretary of State.

Rationale: There are agency-specific statutes that specify the adoption of regulations is exempt from the APA and either the regulation(s) are required to be printed in the CCR or the rulemaking agency desires to have the regulation(s) printed in the CCR. These filings are colloquially known as “Print Only” actions because the rulemaking agency files the action with the Secretary of State before submitting the action to OAL to “print” the regulation(s) in the CCR.

OAL proposes to adopt a definition for “Print Only” in order to clarify the circumstances under which an action may be submitted to OAL as a Print Only action.

This definition, when read in conjunction with the proposed definition for “File and Print,” clearly distinguishes which type of filing is appropriate depending upon the circumstances at issue.

Subsection (a)(8) of Section 1 of Title 1 of the CCR.

Purpose: OAL proposes to amend the existing definition of “Regular rulemaking” to reorganize the contents of the definition, add a specific reference to emergency actions, and remove the reference to the thirty working day period.

Rationale: These changes are necessary to improve readability and explicitly carve out emergency rulemaking actions and certificates of compliance from the existing definition. As previously drafted, the definition did not explicitly exclude emergencies. Insertion of this reference is necessary to clarify the scope of this definition and avoid confusion by the rulemaking agency and the regulated public. OAL is also removing the reference to the thirty working day period because it is inappropriate for inclusion in OAL’s general definitions section and is already addressed elsewhere in the APA.

Reference Note for Section 1 of Title 1 of the CCR.

Purpose: OAL proposes to amend the existing reference note to add references to Government Code sections 11343.8 and 11344, and delete the existing reference to Government Code section 11370.

Rationale: Citing Government Code sections 11343.8 and 11344 as a source of reference is necessary because these sections are being implemented, interpreted, and made specific in section 1. Section 1 makes specific Government Code section 11343.8 by specifying why OAL “may file with the Secretary of State” and “may publish in such manner as it believes proper” exempt regulation(s) proposed for adoption, amendment, or repeal by state agencies. Section 1 makes specific Government Code section 11344 by clarifying requirements pertaining to the official printing and publication of the adoption, amendment, or repeal of regulations.

The reference to Government Code section 11370 is being removed because it contains a general reference to the APA that is not being implemented, interpreted, or made specific in this section.

Subsections (b)(3)(F) and (G) of Section 6 of Title 1 of the CCR.

Purpose: OAL proposes to remove the definition of “Print Only” from section 6. OAL also proposes to remove the quotation marks around “Print Only” and “File and Print” and add semi-colons at the end of the aforementioned paragraphs.

Rationale: The proposed removal of the definition of “Print Only” is necessary because the definition is better suited for inclusion in section 1 with the other definitions, rather than tucked into the procedural provisions of this section.

The proposed punctuation changes qualify as nonsubstantive changes because removing the quotation marks and adding the semicolons improves readability without impacting the meaning, function, application, or interpretation of the regulations.

Section 14 of Title 1 of the CCR.

Purpose: OAL proposes to amend section 14 to clarify that OAL's review of File and Print and Print Only actions includes review of authority and reference citations.

Rationale: The inclusion of accurate authority citations with the regulation text is necessary so the public can readily ascertain where the rulemaking agency derives its authority to adopt regulations. The inclusion of accurate reference citations with the regulation text is necessary so the public can readily ascertain what California constitutional provision(s) or statute(s), federal statute(s) or regulation(s), or court decision(s) or order(s) the rulemaking agency is implementing, interpreting, or making specific in the regulatory section at issue.

Additionally, as the state agency with oversight and responsibility for publication of and integrity of the CCR, OAL has a duty to ascertain what the rulemaking agency claims as an applicable APA exemption and determine whether the proposed change(s) fall within the scope of the claimed exemption. This requires review of all sources of authority and reference the rulemaking agency has identified for each section at issue in the filing.

Subsections (a) and (b)(4) of Section 14 of Title 1 of the CCR.

Purpose: OAL proposes to amend existing subsections (a) and (b)(4) to replace “California Code of Regulations” with “CCR.”

Rationale: This change is necessary to utilize the newly-defined, commonly-used acronym “CCR.”

Authority Note for Section 14 of Title 1 of the CCR.

Purpose: OAL proposes to amend the existing authority note to delete the subdivision reference.

Rationale: The subdivision reference is being removed for consistency with the citation format used in other OAL regulations.

Reference Note for Section 14 of Title 1 of the CCR.

Purpose: OAL proposes to amend the existing reference note to add a reference to Government Code section 11343.8, delete existing subdivision references, and revise the citation format for caselaw citations.

Rationale: Citing Government Code section 11343.8 as a source of reference is necessary because it is being implemented, interpreted, and made specific in section 14. Section 14 makes specific Government Code section 11343.8 by specifying why OAL “may file with the Secretary of State” and “may publish in such manner as it believes proper” exempt regulation(s) proposed for adoption, amendment, or repeal by state agencies. As explained above, OAL has determined that the inclusion of accurate authority and reference citations is a prerequisite for OAL to file exempt regulation(s) with the Secretary of State and/or print exempt regulation(s) in the CCR.

The subdivision references are being removed for consistency with the citation format used in other OAL regulations. Caselaw citations have been revised to align with the California Style Manual.

Subsection (a) of Section 110 of Title 1 of the CCR.

Purpose: Proposed subsection (a) specifies that section 110 applies to File and Print and Print Only actions.

Rationale: This language is necessary to clearly establish the limited scope of application of this section.

Subsection (b) of Section 110 of Title 1 of the CCR.

Purpose: Proposed subsection (b) clarifies that rulemaking agencies submitting File and Print and Print Only actions to OAL must meet the requirements enumerated in section 6 or 6.5, as applicable.

Rationale: Sections 6 and 6.5 set forth methods for submitting actions to OAL depending upon whether the rulemaking agency submits the action in hard-copy (section 6) or electronically (section 6.5). Applying sections 6 and 6.5 to File and Print and Print Only actions promotes OAL's efficient and orderly review of proposed changes.

Subsection (b)(1) of Section 110 of Title 1 of the CCR.

Purpose: Proposed subsection (b)(1) clarifies that the rulemaking agency must submit proposed regulatory text as part of the File and Print or Print Only action.

Rationale: This subsection is necessary to enable OAL to review the proposed changes to the CCR efficiently and effectively, and transmit the authorized change(s) to the Secretary of State and/or publisher for publication in the CCR.

Subsection (b)(1)(A) of Section 110 of Title 1 of the CCR.

Purpose: Proposed subsection (b)(1)(A) clarifies that proposed regulatory text must use underline or italics to indicate additions to, and strikeout to indicate deletions from, the CCR.

Rationale: This subsection is necessary to enable OAL to review the proposed changes to the CCR efficiently and effectively, and transmit the authorized change(s) to the Secretary of State and/or publisher for publication in the CCR. The underline and strikeout formatting standard is the same as the standard used for non-exempt actions pursuant to Government Code section 11346.2(a)(3), so rulemaking agencies and OAL are already familiar with this formatting standard. Requiring use of a different standard for File and Print and Print Only actions would cause unnecessary confusion.

Subsection (b)(1)(B) of Section 110 of Title 1 of the CCR.

Purpose: Proposed subsection (b)(1)(B) clarifies that proposed regulatory text must include authority and reference note(s).

Rationale: The inclusion of accurate authority citations with the regulation text is necessary so the public can readily ascertain where the rulemaking agency derives its authority to adopt regulations. The inclusion of accurate reference citations with the regulation text is necessary so the public can readily ascertain what California constitutional provision(s) or statute(s), federal statute(s) or regulation(s), or court decision(s) or order(s) the rulemaking agency is implementing, interpreting, or making specific in the regulatory section at issue.

Additionally, as the state agency with oversight and responsibility for publication and integrity of the CCR, OAL has a duty to ascertain what the rulemaking agency claims as an applicable APA exemption and determine whether the proposed change(s) fall within the scope of the claimed exemption. This requires review of all sources of authority and reference the rulemaking agency has identified for each section at issue in the filing.

Subsection (a)(2) of Section 110 of Title 1 of the CCR.

Purpose: Proposed subsection (a)(2) specifies that the rulemaking agency must submit a written explanatory statement as part of the File and Print or Print Only action.

Rationale: Although many rulemaking agencies already provide this documentation at the time of filing the action with OAL, some rulemaking agencies submit actions to OAL that are wholly or partially exempt from the APA without submitting any written documentation citing to the claimed exemption(s). As the state agency with oversight over and responsibility for publication of and integrity of the CCR, OAL has a duty to ascertain what the rulemaking agency claims as an applicable APA exemption and determine whether the proposed change(s) fall within the scope of the claimed exemption(s). Proposed subsection (a)(2) seeks to promote efficient and relevant information sharing between OAL and rulemaking agencies. Requiring submission of a written explanatory statement with the File and Print or Print Only action is the most efficient way to effectuate that goal.

Subsection (b)(2)(A) of Section 110 of Title 1 of the CCR.

Purpose: Proposed subsection (b)(2)(A) clarifies that the explanatory statement must include a citation to each APA exemption applicable to the action.

Rationale: This subsection is necessary to efficiently identify all APA exemptions claimed by a rulemaking agency. Inclusion of this information in the explanatory statement will facilitate efficient and timely OAL review of these actions.

Subsection (b)(2)(B) of Section 110 of Title 1 of the CCR.

Purpose: Proposed subsection (b)(2)(B) clarifies that the explanatory statement must include an explanation of how each proposed regulatory change is within the scope of the cited exemption.

Rationale: This subsection is necessary for OAL to efficiently analyze the applicability of all APA exemptions claimed by a rulemaking agency. By requiring inclusion of this information in the explanatory statement, OAL will have the benefit of the agency's interpretation of why a submission is exempt, which will decrease the time agency staff would have otherwise spent discussing the scope and application of the claimed exemption(s) with the OAL reviewing attorney during OAL's review of the action.

Subsection (b)(2)(B)1. of Section 110 of Title 1 of the CCR.

Purpose: Proposed subsection (b)(2)(B)1. clarifies if an APA exemption depends upon a proposed regulation aligning with, conforming to, or being comparable to other standards, the explanatory statement must include for each regulation a citation to the source material that the rulemaking agency is required to use or rely upon for drafting the proposed regulation. Proposed subsection (b)(2)(B)1. also clarifies the citation in the explanatory statement must be sufficient to enable a direct comparison between the proposed regulation and the specifically applicable portion of the source material.

Rationale: This subsection is necessary for OAL to efficiently analyze the applicability of all APA exemptions claimed by a rulemaking agency. By requiring inclusion of this information in the explanatory statement, OAL will have the benefit of the agency's interpretation of why a submission is exempt, which will decrease the time agency staff would have otherwise spent discussing the scope and application of the claimed exemption(s) with the OAL reviewing attorney during OAL's review of the action. In the absence of written information to this effect, it is difficult to identify the source material and conduct a side by side comparison of the proposed regulation and the source material. As the agency responsible for adopting these requirements, the rulemaking agency is in the best position to identify this material. Inclusion of this information in the explanatory statement will facilitate efficient and timely OAL review of these actions.

Subsection (b)(2)(B)2. of Section 110 of Title 1 of the CCR.

Purpose: Proposed subsection (b)(2)(B)2. clarifies if an APA exemption depends upon satisfying a condition, the explanatory statement must include confirmation that the condition is satisfied.

Rationale: This subsection is necessary to ensure, via an affirmative representation from the rulemaking agency, that it has satisfied all required condition(s) before claiming an APA exemption.

For example, Fish and Game Code section 2075.5(e)(2) authorizes the Fish and Game Commission (FGC) to change the status of a plant species on the list of endangered species or list of threatened species without complying with the APA. However, in order for the exemption to apply, FGC shall, within 30 days of adopting written findings, publish a notice of that finding and add the species to, or remove the species from, the list of endangered species or the list of threatened species.

Another example, Health and Safety Code section 50199.17(a) states that the California Tax Credit Allocation Committee (CTCAC) may adopt, amend, or repeal regulations regarding the allocation of low-income housing credits and the action is exempt from the procedural requirements of the APA. However, in order for the exemption to apply, Health and Safety Code section 50199.17(b) requires CTCAC to provide notice of the proposed action and a minimum, 21-day public comment period, schedule at least one public hearing before the close of the public comment period, and maintain a rulemaking file that includes a final statement of reasons.

As the state agency with oversight and responsibility for publication of and integrity of the CCR, OAL has a duty to ascertain whether the rulemaking agency has satisfied all applicable conditions before the rulemaking agency avails itself of the APA exemption. Requiring a written affirmative representation from the rulemaking agency is the most efficient way to confirm compliance with any applicable requirements.

Subsection (c) of Section 110 of Title 1 of the CCR.

Purpose: Proposed subsection (c) clarifies that OAL is subject to a 30-working-day timeframe to determine whether it is proper to file the regulation(s) with the Secretary of State and/or print the regulation(s) in the CCR.

Rationale: The proposed 30-working-day time period is necessary because it appropriately balances the need for OAL to have adequate time available to review File and Print and Print Only actions against the need for rulemaking agencies to have their actions reviewed within a reasonable amount of time. Additionally, for convenience and ease of administration, this proposed timeframe aligns with the timeframe OAL employs to review regular rulemaking actions (Government Code section 11349.3(a)), certificates of compliance (Government Code section 11349.6(d)), and section 100 changes without regulatory effect (Cal. Code Regs., tit. 1, sec. 100, sub. (c)).

Subsection (d) of Section 110 of Title 1 of the CCR.

Purpose: Proposed subsection (d) clarifies how OAL will determine whether to grant a rulemaking agency's request to file regulation(s) with the Secretary of State and/or print regulation(s) in the CCR.

Rationale: It is necessary, as a condition of granting a rulemaking agency's request to file regulation(s) with the Secretary of State and/or print regulation(s) in the CCR, for OAL to determine whether the proposed change(s) to the CCR fall within the scope of the cited exemption(s) and all required documentation has been submitted. If both of these criteria are met, OAL will file regulation(s) with the Secretary of State and/or print regulation(s) in the CCR. The limited scope of this review is consistent with the intent of Government Code section 11343.8 and does not infringe upon the exemption(s) relied upon by the rulemaking agency.

Subsection (e) of Section 110 of Title 1 of the CCR.

Purpose: Proposed subsection (e) clarifies that a rulemaking agency may, in writing, request to withdraw the File and Print or Print Only action from OAL's review prior to OAL taking action on the File and Print or Print Only action. Proposed subsection (e) also clarifies that if OAL receives such a request, it will not take action on the File and Print or Print Only action.

Rationale: This subsection is necessary to convey to rulemaking agencies the option to withdraw a File and Print or Print Only action from OAL's review prior to OAL taking action on the File and Print or Print Only action. For convenience, ease of administration, and consistency with the treatment of actions subject to the APA, proposed subsection (e) clearly identifies withdrawal as an option for File and Print and

Print Only actions. If a rulemaking agency elects to withdraw a File and Print or Print Only action, requiring that the request to withdraw be transmitted to OAL in writing is consistent with the treatment of actions subject to the APA.

Subsection (f) of Section 110 of Title 1 of the CCR.

Purpose: Proposed subsection (f) clarifies that OAL will send written notification of its determination of whether to file the regulation(s) with the Secretary of State and/or print the regulation(s) in the CCR to the rulemaking agency. Proposed subsection (f) also clarifies that OAL will send written notification to the rulemaking agency of the rulemaking agency's request to withdraw the File and Print or Print Only action from OAL review.

Rationale: Proposed subsection (f) is necessary to clarify that OAL will send written notice to the rulemaking agency of: 1) its determination of whether to file the regulation(s) with the Secretary of State and/or print the regulation(s) in the CCR to the rulemaking agency, or 2) the rulemaking agency's request to withdraw the action from OAL review. OAL sends written notice to the rulemaking agency of the action taken following completion of OAL's review of rulemaking actions (e.g., Government Code section 11349.3(b)), and section 100 changes without regulatory effect (Cal. Code Regs., tit. 1, sec. 100, sub. (c)). For convenience, ease of administration, and consistency with the treatment of actions subject to the APA, proposed subsection (f) clearly establishes this practice as also being applicable to File and Print and Print Only actions.

Authority Note for Section 110 of Title 1 of the CCR.

Purpose: OAL is proposing to add a citation to Government Code section 11342.4.

Rationale: The citation to Government Code section 11342.4 is necessary because this statute provides OAL with express rulemaking authority.

Reference Note for Section 110 of Title 1 of the CCR.

Purpose: OAL is proposing to add a citation to Government Code section 11343.8.

Rationale: The citation to Government Code section 11343.8 is necessary because OAL is further interpreting and making specific the procedures that pertain to File and Print and Print Only actions.

ECONOMIC IMPACT ASSESSMENT (EIA)

Creation or Elimination of Jobs in California: None. The requirements of the proposed action apply exclusively to state government agencies, and no private sector business are required to comply with them.

While the preparation of the written explanatory statement may require use of agency staff time and resources, the amount of time and resources spent preparing the written statement in advance of submission to OAL is likely offset by the decrease in time the same agency staff would have otherwise spent discussing the scope and application of the exemption with the OAL reviewing attorney during OAL's review of the action. No new positions are required and no positions will be eliminated as a result of compliance.

Creation of New Businesses or Elimination of Existing Businesses in California: None. The requirements of the proposed action apply exclusively to state government agencies, and no private sector business are required to comply with them.

Expansion of Businesses Currently Doing Business within California: None. The requirements of the proposed action apply exclusively to state government agencies, and no private sector business are required to comply with them.

Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment: This proposed rulemaking action benefits the general welfare of California residents and businesses by promoting openness and transparency in government and providing for greater efficiency of governmental operations. Pursuant to Government Code section 11346.5(b)(2)(A), this proposed rulemaking action will not affect worker safety or the State's environment.

DOCUMENTS RELIED UPON

None.

ALTERNATIVES THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

OAL is not aware of any alternatives that would lessen the impact on small business because the proposed regulations do not impact small business. The proposed regulations govern the submission of exempt actions by rulemaking agencies to OAL for filing with the Secretary of State and/or printing in the CCR.

REASONABLE ALTERNATIVES CONSIDERED BY OAL AND REASONS FOR REJECTION

No alternatives have been brought to OAL's attention thus far. OAL welcomes public comments concerning any proposed alternatives to the proposed rulemaking action.

PRESCRIPTIVE STANDARDS IN LIEU OF PERFORMANCE STANDARDS

This proposed rulemaking action does not mandate the use of any specific technologies or equipment.

EVIDENCE OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS

OAL is not aware of any significant statewide adverse economic impact on business because the proposed regulations do not impact business. The proposed regulations govern only executive branch state agencies submitting exempt actions to OAL for filing with the Secretary of State and/or printing in the CCR.