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The Regular Rulemaking Process

Every department, division, office, officer, bureau, board or commission in the executive branch of the California state government must follow the rulemaking procedures in the Administrative Procedure Act (Government Code section 11340 et seq.) and regulations adopted by the Office of Administrative Law (OAL), unless expressly exempted by statute from some or all of these requirements. The Administrative Procedure Act (APA) requirements are designed to provide the public with a meaningful opportunity to participate in the adoption of regulations or rules that have the force of law by California state agencies and to ensure the creation of an adequate record for the public, OAL and judicial review.

Generally, there are two types of rulemaking procedures that a state agency can pursue: **regular** or **emergency**. The [regular rulemaking process](#) requires that a state agency meet certain public hearing and notice requirements. The [emergency rulemaking process](#) has different requirements, which generally include a brief public notice period, a finding of emergency, a brief public comment period, review by OAL and an OAL decision. In addition, some agencies have requirements related to regular or emergency rulemakings that are unique to that particular agency. (Please also see either OAL's [Regular Rulemaking Checklist](#) or [Emergency Rulemaking Checklist](#).)

For the [regular rulemaking process](#), once a state agency decides to conduct a regular rulemaking action, it develops the documents required to conduct a formal APA rulemaking proceeding. Some agencies involve the public during this stage, while others do not. Government Code section 11346.45 requires an agency to engage in pre-notice public discussions (also called "workshopping") if the proposal is large or complex. The agency develops four documents during the preliminary activity stage which are needed to initiate the formal rulemaking process: (1) [the proposed text](#); (2) the [Initial Statement of Reasons](#); (3) the [STD 399 Fiscal Impact Statement](#); and (4) the [Notice of Proposed Regulatory Action](#) (notice).

To initiate a rulemaking action, an agency issues a notice by having it published in the [California Regulatory Notice Register](#), by mailing the notice to those persons who have filed a request for notice of regulatory action, and by posting the notice, text, and Initial Statement of Reasons on the agency's website. See Government Code section 11346.5. Once the notice is published in the California Regulatory Notice Register, the APA rulemaking process is officially started and the agency has one year within which to complete the rulemaking and submit the rulemaking file to OAL.

The APA requires at a minimum a 45-day opportunity to comment to the agency in writing on the proposed regulation. The notice specifies where the comments must be directed and the date this opportunity to comment in writing on the proposal closes. Under the APA, an agency has an option as to whether it will hold a public hearing on a proposed rulemaking action. However, if an agency does not schedule a public hearing, any interested person can submit a written request for one to be held. The written request for a hearing must be submitted at least 15 days prior to the close of the written public comment period, and the agency must give notice of and hold a public hearing. See Government Code section 11346.8.

After the initial public comment period, a rulemaking agency may decide to change its initial proposal either in response to public comments received or on its own initiative. The agency

must then decide whether a change is (1) nonsubstantial; (2) substantial and sufficiently related; or (3) substantial and not sufficiently related. See Government Code section 11346.8(c). A rulemaking agency must make each substantial, sufficiently related change to its initial proposal available for public comment for at least 15 days before adopting such a change. Thus, before a rulemaking agency adopts such a change, it must mail a notice of opportunity to comment on proposed modifications along with a copy of the text of the new proposed changes to each person who has submitted written comments on the proposal, testified at the public hearing, or asked to receive a notice of proposed modifications. The agency must also post the notice on its website. No public hearing is required. The public may comment on the proposed modifications in writing.

The agency must then consider comments received during the 15-day comment period which are specifically directed to the proposed modifications. An agency may conduct more than one 15-day opportunity to comment on modifications.

A rulemaking agency must summarize and respond on the record to timely comments that are directed at the proposal or at the procedures followed by the agency during the regulatory action. With each comment, the agency must either (1) explain how it has amended the proposal to accommodate the comment, or (2) explain the reasons for making no change to the proposal. The summary and response to comments is included as part of the rulemaking file in a document called a [Final Statement of Reasons](#). See Government Code section 11346.9.

A rulemaking agency must transmit a rulemaking action to OAL for review within one year from the date that the notice was published in the California Regulatory Notice Register.

[OAL then has 30 working days to conduct its review](#). OAL must review the rulemaking record to determine whether it demonstrates that the rulemaking agency satisfied the procedural requirements of the APA and to review the proposed regulations for compliance with the six legal standards set forth in the APA: Authority, Reference, Consistency, Clarity, Nonduplication and Necessity. OAL may not substitute its judgment for that of the rulemaking agency with regard to the substantive content of the regulations. See Government Code section 11349.1.

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Excerpt of Laws (Government Code) Governing the Adoption of Regulations in California:

11349. The following definitions govern the interpretation of this chapter:

(a) "Necessity" means the record of the rulemaking proceeding demonstrates by substantial evidence the need for a regulation to effectuate the purpose of the statute, court decision, or other provision of law that the regulation implements, interprets, or makes specific, taking into account the totality of the record. For purposes of this standard, evidence includes, but is not limited to, facts, studies, and expert opinion.

(b) "**Authority**" means the provision of law which permits or obligates the agency to adopt, amend, or repeal a regulation.

(c) "**Clarity**" means written or displayed so that the meaning of regulations will be easily understood by those persons directly affected by them.

(d) "**Consistency**" means being in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or other provisions of law.

(e) "**Reference**" means the statute, court decision, or other provision of law which the agency implements, interprets, or makes specific by adopting, amending, or repealing a regulation.

(f) "**Nonduplication**" means that a regulation does not serve the same purpose as a state or federal statute or another regulation. This standard requires that an agency proposing to amend or adopt a regulation must identify any state or federal statute or regulation which is overlapped or duplicated by the proposed regulation and justify any overlap or duplication. This standard is not intended to prohibit state agencies from printing relevant portions of enabling legislation in regulations when the duplication is necessary to satisfy the clarity standard in paragraph (3) of subdivision (a) of Section 11349.1. This standard is intended to prevent the indiscriminate incorporation of statutory language in a regulation.

11349.1. (a) The office shall review all regulations adopted, amended, or repealed pursuant to the procedure specified in Article 5 (commencing with Section 11346) and submitted to it for publication in the California Code of Regulations Supplement and for transmittal to the Secretary of State and make determinations using all of the following standards:

- (1) Necessity.
- (2) Authority.
- (3) Clarity.
- (4) Consistency.
- (5) Reference.
- (6) Nonduplication.

In reviewing regulations pursuant to this section, the office shall restrict its review to the regulation and the record of the rulemaking proceeding. The office shall approve the regulation or order of repeal if it complies with the standards set forth in this section and with this chapter.

(b) In reviewing proposed regulations for the criteria in subdivision (a), the office may consider the clarity of the proposed regulation in the context of related regulations already in existence.

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OAL CHECKLIST REGULAR APA RULEMAKING

OAL File No. _____ - _____ - _____

Agency: _____

Reviewer: _____

Due Date: _____

(All citations are to the Government Code, unless otherwise specified. CCR means California Code of Regulations.)

REQUIREMENT

PROBLEMS

1. FORM 400 (1 CCR 6)			
Is the name of rulemaking agency in AGENCY WITH RULEMAKING AUTHORITY box? (1 CCR 6(b)(10))	Y		N
Is the subject described in SUBJECT OF REGULATION(S) box? (1 CCR 6(b)(1))	Y		N
Was the rulemaking action submitted within 1 year of publication date of notice? (11346.4(b))	Y		N
<i>If from an agency in Department of Consumer Affairs, has the period been extended pursuant to Business & Professions Code 313.1(e)?</i>	Y	NA	N
Are all SECTIONS AFFECTED and TITLES listed? (1 CCR 6(b)(2))	Y		N
Is the TYPE OF FILING correctly indicated? (1 CCR 6(b)(3))	Y		N
CERTIFICATE OF COMPLIANCE FILING ONLY:			
Is the box in B.3. on Form 400 marked "Certificate of Compliance," or appropriate equivalent certification in the file? (11346.1(e)) <i>NOTE: If Department of Corrections and Rehabilitation (CDCR) file, skip remainder of this block and see next block below.</i>	Y	NA	N
For an emergency adoption, repeal or amendment:			
Was Certificate of Compliance submitted to OAL within 180 days of effective date of initially adopted emergency regulations? (11346.1(e); 11349.6(b))	Y	NA	N
OR			
Is there a special statute for more or less time?	Y	NA	N
For an emergency readoption:			
<i>If Certificate of Compliance is filed during first readoption, was it submitted to OAL within 90 days of the effective date of the first readoption? (11346.1(h); 11349.6(b))</i>	Y	NA	N
<i>If certification is filed during second readoption, was it submitted to OAL within 90 days of effective date of second readoption? (11346.1(h); 11349.6(b))</i>	Y	NA	N
NOTE: If not submitted within the required time period, it may be necessary			

to send a “Notice of Deletion or Reprinting Following Expiration of Emergency Regulatory Action” so that the regulation as it existed prior to the emergency adoption, repeal or amendment thereupon becomes effective. (11346.1(e)-(g))			
CERTIFICATION OF COMPLIANCE FOR CDCR FILE: For an emergency adoption, repeal or amendment: Was it submitted to OAL within 160 days of effective date of emergency regulations? (Penal Code 5058.3(a)(1))	Y	NA	N
For an emergency readoption: <i>If certification is filed during first readoption</i> , was it submitted to OAL within 90 days of effective date of first readoption? (11346.1(h); 11349.6(b) and Penal Code 5058.3(a)(1))	Y	NA	N
<i>If certification is filed during second readoption</i> , was it submitted to OAL within 90 days of effective date of second readoption? (11346.1(h); 11349.6(b); Penal Code 5058.3(a)(1))	Y	NA	N
ONLY FOR MODIFIED REGULATIONS AND/OR WHEN MATERIAL IS ADDED TO RULEMAKING FILE: Does it identify the beginning and ending dates of all public availability periods? (1 CCR 6(b)(4))	Y	NA	N
Is the EFFECTIVE DATE designated? (1 CCR 6(b)(5))	Y		N
Is the effective date specifically prescribed by an underlying statute? (11343.4(a))	Y	NA	N
<i>If early effective date is requested</i> , is a written request demonstrating good cause included? (11343.4(c))	Y	NA	N
<i>If later effective date prescribed by agency</i> , is this in a written instrument filed with, or as part of, the regulation? (11343.4(b))	Y	NA	N
ONLY WHEN NOTICE TO, REVIEW, CONSULTATION, APPROVAL, OR CONCURRENCE BY ANOTHER AGENCY IS REQUIRED BY STATUTE (1 CCR 6 (b)(6)):			
Is designated agency indicated in B.6.?	Y	NA	N
Is the name of agency CONTACT PERSON and TELEPHONE NUMBER included? (1 CCR 6(b)(7))	Y		N
Does it include the SIGNATURE OF AGENCY HEAD OR DESIGNEE ? Note: Designee must be listed in a signed delegation order in rulemaking file or on file with OAL. (1 CCR 6(b)(8))	Y		N
Is it dated? (1 CCR 6(b)(8)(D))	Y		N
Is the name and title typed? (11343(f); 1 CCR 6(b)(8)(E))	Y		N

2. FINAL REGULATION TEXT			
Is the final regulation text attached to the original and six copies of the Form 400? (11343; 1 CCR 6(a))	Y		N
INCORPORATION BY REFERENCE (1 CCR 20)			
Are any document(s) or form(s) mentioned in the regulations that have a regulatory effect?	Y		N
--If “no,” go to block “REGULATION TEXT” below.			
--If “yes,” is the agency incorporating them by reference?	Y	NA	N
-- If “no,” all regulatory provisions in the document or form must either be: (1) in existing regulation(s) or statute(s); or (2) in the proposed regulation to be printed in the CCR.			
--If “yes,” are the document(s) or form(s) attached to the original Form 400 for filing with the Secretary of State?	Y	NA	N
<i>Note:</i> Six duplicate copies of document incorporated by reference not required for formal publication reasonably available from commonly known or identified source (1 CCR 20(d)). Also, see block on “Incorporation by Reference” in #13: Final Statement of Reasons.			
--Is the title of the document or form clearly set out in the text?	Y	NA	N
--Is there a statement in the text that specifically identifies which portions of document/form are incorporated?	Y	NA	N
--If document(s) or form(s) that are incorporated are being amended, are the changes clearly indicated by underline/strikeout?	Y	NA	N
--Is there a statement in the proposed text that includes the revision date (or other specific identifier) of the particular version incorporated?	Y	NA	N
<i>Exception:</i> No date required if authorizing statute requires adoption/enforcement of incorporated provision and any subsequent amendments.			
REGULATION TEXT			
Do(es) the regulation section number(s) fit into the CCR?	Y		N
Are Authority and Reference citations included with the final text? (1 CCR 8(a)(1))	Y		N
Does the underlying text (and Authority and Reference cites) match what is printed in the CCR? (11344)	Y	NA	N
Does the final text show changes to the CCR in underline/italic and strikeout format for additions and deletions; if adoption of new final text, then clearly	Y		N

<p>indicated that all is to be added to CCR? (1 CCR 8(b))</p> <p>Note: For Certification of Compliance filings, the final text will be the same as the express terms (originally proposed text) if there were no post-notice modifications, but will not include the underline/strikeout indicating the emergency changes.</p>			
<p>Is the final text a Building Standard?</p> <p><i>Definition for Building Standard and exceptions are in Health & Safety Code 18909(a)-(j).</i></p>	Y	NA	N
<p>--If "yes:"</p> <p>--Has the Building Standards Commission been contacted? (Health & Safety Code 18942.1)</p>	Y	NA	N
<p>--Has the final text been approved and filed pursuant to Health & Safety Code 18938?</p>	Y	NA	N
<p>RESUBMITTAL FILING ONLY:</p> <p><i>Previously Disapproved Regulations Only:</i></p> <p>Pursuant to 11349.4(b), limit review to: (1) reasons expressly identified in disapproval decision; or (2) issues arising from substantial change to provisions, or intervening statutory change or court orders/decisions.</p>			
<p>Are substantive provisions <i>significantly</i> changed? (11349.4(a))</p>	Y	NA	N
<p>If "no,"</p> <p>Was it resubmitted within 120 days of agency's receipt of decision of disapproval? OR</p> <p>Was an extension granted by Director for good cause?</p>	Y	NA	N
<p>If "yes,"</p> <p>Has the agency complied with Article 5, commencing with 11346?</p>	Y	NA	N
<p><i>Withdrawn Regulations Only:</i></p> <p>Was it resubmitted within 1 year of publication date of notice? (11346.4(b))</p>	Y	NA	N
<p><i>Previously Disapproved AND Withdrawn Regulations (11349.4(c)):</i></p> <p>Is a transmittal memo included which:</p> <p>Identifies prior file by date of submission? AND</p>	Y	NA	N
<p>Specifies parts of prior record incorporated in the resubmittal? (1 CCR 84)</p>	Y	NA	N
<p>Is agency submitting a copy of the prior record, <i>if returned</i>?</p>	Y	NA	N

3. TABLE OF CONTENTS/AFFIDAVIT OR DECLARATION OF CLOSURE (11347.3(b)(12))			
Is a Table of Contents/Index included in the rulemaking file?	Y		N
Does it identify each item in rulemaking file?	Y		N
Is an Affidavit/Declaration under penalty of perjury included in the rulemaking file?	Y		N
Does it state that the rulemaking file is closed and complete?	Y		N
Is the date file closed included?	Y		N
--Is closure date later than the date of all documents in the rulemaking file?	Y		N
4. NOTICE OF PROPOSED RULEMAKING			
Is a NOTICE included in the rulemaking file? (11347.3(b)(2))	Y		N
HEARING: Is a hearing scheduled?	Y		N
<i>If “yes”</i> — Is the time, place and nature of proceeding included in the Notice? (11346.5(a)(1))	Y		N
Were there at least 45 days (or other time period specified by statute) between publication date and hearing? (11346.4(a))	Y	NA	N
(Also, see # 8: <i>Transcripts, Recording, or Minutes.</i>)	Y	NA	N
<i>If no hearing is scheduled</i> , is information on opportunity to request one included? (11346.5(a)(17))	Y	NA	N
--Was a hearing timely requested? <i>--If “no,” go to “Written Comment Period” block below.</i>	Y	NA	N
<i>--If “yes:”</i> --Is request included in rulemaking file? (11346.8(a); 11347.3(b)(6))	Y	NA	N
--Was notice mailed to the extent practicable? (11346.8(a))	Y	NA	N
WRITTEN COMMENT PERIOD: Does Notice contain the date written comment period closes? (11346.5(a)(15))	Y		N
Were there at least 45 days (or other time period specified by statute) between publication date and close of written comment period? (11346.4(a))	Y		N

AUTHORITY and REFERENCE: Are citations included? (11346.5(a)(2); 1 CCR 14)	Y	N
INFORMATIVE DIGEST/ POLICY STATEMENT OVERVIEW (11346.5(a)(3)): Is the format similar to the Legislative Counsel’s digest?	Y	N
Is it in plain English?	Y	N
Does it include a clear and concise summary of existing laws and regulations, <i>if any</i> , related directly to the proposed rulemaking and its effect? (11346.5(a)(3)(A))	Y	NA N
Does the policy statement overview explain broad and, if appropriate, specific objectives? (11346.5(a)(3)(C))	Y	N
<i>If there is a substantial difference from existing, comparable federal regulation or statute</i> , are significant differences briefly described? (11346.5(a)(3)(B))	Y	NA N
-- <i>If “yes,”</i> is a full citation to federal regulation or statute included? (11346.5(a)(3)(B))	Y	NA N
<i>If document(s) or form(s) are incorporated by reference</i> , are they listed by title and date? (1 CCR 20(c)(3))	Y	NA N
MANDATED BY FEDERAL LAW OR REGULATIONS: <i>If adopting or amending regulations on this basis that are identical to previously adopted or amended federal regulation</i> , is a statement included to that effect, together with a citation to where an explanation of the provisions of the regulation can be found? (11346.2(c) and 11346.9)	Y	NA N
-- <i>If “yes,”</i> this is sufficient to satisfy the ISR requirements of 11346.2(b) and the FSR requirements of 11346.9. (<i>Review of # 7: ISR and # 13: FSR is not necessary.</i>)	Y	NA N
OTHER STATUTORY REQUIREMENTS: Are there any requirements identified in the Notice that are specific to the agency or type of regulation? (11346.5(a)(4))	Y	NA N
LOCAL MANDATE (11346.5(a)(5)): Is a determination (policy or expenditure) included as to whether a mandate is imposed on local agency or school district that requires reimbursement pursuant to Section 17500 et seq.?	Y	N
--Is a mandate imposed?	Y	NA N
-- <i>If “yes,”</i> is reimbursement required pursuant to Section 17500 et seq.?	Y	NA N
Note: <i>If regulation results in reimbursable cost to local agency /school district</i> , OAL must disapprove unless information specified in 11349.1(d)(3)		

on source of funds is included in rulemaking file. <i>See #10: Form 399 (Fiscal Impact).</i>			
FISCAL IMPACT (11346.5(a)(6)): The following estimates must be prepared in accordance with DOF instruction (SAM 6601-6616):			
--Is there any cost to any local agency or school district requiring reimbursement pursuant to 17500 et seq.?	Y		N
--Is there any cost or savings to any state agency?	Y		N
--Is there any other non-discretionary cost or savings imposed upon local agencies?	Y		N
--Is there any cost or savings in federal funding to the state?	Y		N
HOUSING COSTS (11346.5(a)(12)): <i>If agency makes initial determination of significant effect on housing costs, is a statement of that effect included?</i>	Y	NA	N
SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY TO COMPETE (11346.3(a); 11346.5(a)(7)): <i>If agency makes initial determination that proposal may have such an impact, does the determination:</i>			
--Identify the types of businesses affected?	Y	NA	N
--Describe projected compliance requirements?	Y	NA	N
--Solicit proposed alternatives using 11346.5(a)(7)(C) boilerplate language?	Y	NA	N
<i>If agency makes initial determination that proposal will not have such an impact, does notice make a declaration to that effect? (11346.5(a)(8)) (Check ISR for evidence relied upon to support determination.)</i>	Y	NA	N
BUSINESS REPORT (11346.5(a)(11); 11346.3(c)): Does the regulation require a report to be made?	Y		N
Does the report requirement apply to business?	Y	NA	N
-- <i>If “yes”, is there a finding that it is necessary for the health, safety, or welfare of the people of the state that the regulation applies to business?</i>	Y	NA	N
ASSESSMENT REGARDING EFFECT ON JOBS/BUSINESSES (11346.5(a)(10)): Is a statement included about results of assessment regarding creation/ elimination of California jobs and creation of new, or elimination/ expansion of existing California businesses?	Y		N

COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS (11346.5(a)(9)): Is a statement included regarding all known cost impacts a representative private person or business would incur in reasonable compliance?	Y	NA	N
<i>If no known cost impacts</i> , is boilerplate “not aware of any cost impacts” statement included?	Y	NA	N
SMALL BUSINESS (1 CCR 4(a) and (b)): Is a statement included that proposed action does/does not affect small businesses? (1 CCR 4(a))	Y		N
-- <i>If it “does not affect” small business</i> — Is a brief explanation included of reason for “does not affect” determination? (1 CCR 4(b))	Y	NA	N
ALTERNATIVES STATEMENT (11346.5(a)(13)): Is a statement included that a least burdensome reasonable alternative determination must be made?	Y		N
CONTACT PERSON (11346.5(a)(14)): Is the name and telephone number of agency representative and designated backup contact person included?	Y		N
AVAILABILITY STATEMENTS (11346.5(a)(16)): Are the following statements included: --Availability of express terms?	Y		N
--Availability of initial statement of reasons?	Y		N
--Availability of information upon which proposed rulemaking is based? (11346.5(b); 11346.2(a))	Y		N
--Availability of substantial changes to original proposal for at least 15 day prior to agency adoption/repeal/amendment of resulting regulation? (11346.5(a)(18))	Y		N
FINAL STATEMENT OF REASONS (11346.5(a)(19)): Is a statement included explaining how to get a copy of the final statement of reasons?	Y		N
INTERNET ACCESS (11346.4(a)(6); 11346.5(a)(20)): Is a statement included explaining how materials published or distributed through the agency’s Internet website, <i>if the agency has one</i> , can be accessed?	Y		N

5. ORIGINALLY PROPOSED TEXT (Express Terms)			
Is the originally proposed text included in the rulemaking file? (11347.3(b)(10))	Y		N
Does the underlying text match existing regulation text printed in the CCR? (11344; 11346.2 (a)(3))	Y	NA	N
Are all proposed changes to the CCR, including Authority and Reference citations, in underline/italic, strikeout format? (11346.2 (a)(2) and (3))	Y		N
6. MAILING STATEMENT FOR 45-DAY NOTICE			
Is the mailing statement included in rulemaking file? (11346.4(a)(1)-(4); 1 CCR 86)	Y		N
Is it adequate? (11346.4(a)(1)-(4); 1 CCR 86)	Y		N
7. INITIAL STATEMENT OF REASONS (ISR)			
Is ISR included in the rulemaking file? (11347.3(b)(2))	Y		N
Is the specific purpose of each proposed adoption, amendment, repeal identified? (11346.2(b)(1))	Y		N
Is there a rationale/reasonable necessity for each proposed adoption, amendment, repeal? (11346.2(b)(1))	Y		N
Is each regulation provision covered? (1 CCR 10(b))	Y		N
Is each study, report, document relied upon, <i>if any</i> , identified? (11346.2(b)(2))	Y	NA	N
<i>If mandating specific technologies or equipment</i> , does it include a statement of reasons why these are required? (11346.2(b)(1))	Y	NA	N
<i>If specific actions, procedures, technologies, or equipment prescribed</i> , was the use of a performance standard considered? (11340.1(a); 11346.2(b)(3)(A))	Y	NA	N
Does it include a description of reasonable alternatives that were considered, <i>if any</i> , and reasons for rejecting them? (11346.2(b)(3)(A) and (C))	Y	NA	N
<i>If any adverse impact on small business</i> , does it include a description of reasonable alternatives considered to lessen impact and agency's reasons for rejecting alternatives? (11346.2(b)(3)(B) and (C))	Y	NA	N
Does it include facts, evidence, documents, testimony, or other evidence	Y		N

relied upon to support initial determination in the notice that the regulation will not have a significant adverse economic impact on business? (11346.2(b)(4))			
<i>If agency under Cal-EPA, Resources Agency or Fire Marshal (11346.2(b)(5)):</i>			
--Is a description of efforts to avoid unnecessary duplication or conflict with Code of Federal Regulations (CFR) included?	Y	NA	N
--Is the required finding to adopt regulation(s) different from CFR included?	Y	NA	N

8. TRANSCRIPT, RECORDING, OR MINUTES

<i>The rulemaking file shall include a transcript, recording, or minutes of any public hearing connected with the adoption, amendment, or repeal of the regulation. (11347.3(b)(8))</i>			
Is transcript/recording/minutes included in the rulemaking file? (11347.3(b)(8))	Y	NA	N
--If transcript or recording, is it verbatim? (1 CCR 90(b))	Y	NA	N
--If minutes, are they sufficiently detailed to indicate objections and recommendations made? (1 CCR 90(c))	Y	NA	N
<u>Adoption of Regulation:</u>			
Is the adoption by a Board or Commission?	Y	NA	N
Does the transcript/recording/minutes demonstrate that board or commission with rulemaking authority adopted the regulation(s) after complying with public availability requirements? (11346.8, 11347.3(b)(8); 1 CCR 90(a))	Y	NA	N
Does final text (including any substantial changes) match text expressly adopted by board or commission? (11346.8(a) and (c))	Y	NA	N

9. POST-NOTICE MODIFICATIONS

REGULATION TEXT:			
Are there differences between originally noticed text (express terms) and final text submitted to OAL? (11346.8(c))	Y		N
--If “no,” go to “Availability of Relied Upon Material” block below in this part.	Y	NA	N
--If “yes,” are all changes <i>nonsubstantial</i> (1 CCR 40) or <i>solely</i>	Y	NA	N

<i>grammatical?</i> (11346.8(c))			
--If “no,” is modified text of regulation included in rulemaking file? (11347.3(a)(10))	Y	NA	N
--If “yes,” go to “Availability of Relied Upon Material” block below in this part.	Y	NA	N
Does the modified text show the full text of regulation as originally proposed with proposed changes clearly indicated? (1 CCR 44; 1 CCR 46)	Y	NA	N
Are all <i>substantial</i> changes (1 CCR 40) <i>sufficiently related</i> to the original proposal? (11346.8(c); 1 CCR 42)	Y	NA	N
--If “yes,” notice and 15-day comment period required on changes that are <i>sufficiently related</i> . (11346.8(c))			
--If “no,” notice and new 45-day comment period required on changes that are <i>not sufficiently related</i> . (11346.4; 1346.8(c))			
NOTICE OF 15-DAY COMMENT PERIOD(S):			
Is the 15-day Notice included in the rulemaking file? (11347.3(a)(2))	Y	NA	N
Does Notice state the period within which comments will be received? (1 CCR 44(a))	Y	NA	N
Was it mailed with full text of regulation, with proposed changes clearly indicated? (1 CCR 44(a))	Y	NA	N
<i>If newly incorporated document or form is included</i> , is it identified by title and date of publication or issuance? (1 CCR 20(c)(3))	Y	NA	N
SECTION 44 CONFIRMING STATEMENT (1 CCR 44(b), (c) and (d); 11347.3(b)(9)):			
Is the confirming statement included in the rulemaking file?	Y	NA	N
Does it make the following statements:			
--That agency complied with the requirements of 1 CCR 44?	Y	NA	N
--The beginning and ending dates for the availability period? (1 CCR 44 (b) and (d))	Y	NA	N
--The date that notice and proposed text were mailed? (1 CCR 44(b))	Y	NA	N
<i>If no persons to mail to</i> , is a statement included to confirm this? (1 CCR 44(c))	Y	NA	N

AVAILABILITY OF RELIED UPON MATERIAL			
Was any relied upon material added to rulemaking file after publication of notice (and not identified in the ISR or otherwise made available)?	Y	NA	N
<i>--If "no," go to # 10: Form 399 (Fiscal Impact).</i>			
<i>--If "yes,"</i> was material made available for at least 15 days as required by 11347.1?	Y	NA	N
<i>--If "no,"</i> OAL must disapprove or agency withdraws file.			
<i>--If "yes,"</i> is Notice included in rulemaking file?	Y	NA	N
--Does Notice identify added document(s) and location where they are available? (11347.1(b))	Y	NA	N
--Does Notice include statement confirming compliance with notice requirements including date mailed? (11347.1(e))	Y	NA	N
<i>If no persons to mail to,</i> is a statement included to confirm this? (11347.1(f))	Y	NA	N
10. FORM 399 (FISCAL IMPACT)			
Is the Fiscal Impact portion of Form 399 included in the rulemaking file? (11346.5 (a)(6))	Y		N
Is the Fiscal Impact portion of Form 399 completed and signed by the Agency Secretary or, if rulemaking agency is not under an Agency Secretary, by the highest ranking official in the agency? (SAM 6614)	Y		N
Is DOF concurrence required? (SAM 6615)	Y		N
<i>--If "yes,"</i> is DOF signature included?	Y	NA	N
Are computations leading to dollar estimate, <i>if any</i> , and supporting data included in the rulemaking file? (11349.1(d)(1); SAM 6622)	Y	NA	N
Has DOF been notified if the rulemaking file was returned to the agency pursuant to 11349.1(d) for lack of proper estimates? (11349.1(e))	Y	NA	N

11. OTHER MATERIAL IN RULEMAKING FILE			
Is a Petition, <i>if any</i> , proposing regulatory change included? (11340.7; 11347.3(b)(1))	Y	NA	N
Does the rulemaking file contain public comments and other information received:			
--During 45 day comment period?	Y	NA	N
--During 15 day comment period(s), <i>if any</i> ?	Y	NA	N
--In connection with proposed rulemaking at other times? (11347.3(b)(6))	Y	NA	N
If the scheduled public hearing was continued or postponed—	Y	NA	N
--Was there adequate notice of resumption? (11346.8(b))			
--Is a copy of this notice included in the rulemaking file? (11347.3(b)(2) and (11))	Y	NA	N
Is all material relied upon by the agency included in the rulemaking file? (11347.3(b)(7))	Y	NA	N
Is any other information, statement, report or data which the agency is required to consider or prepare included in the rulemaking file? (11347.3(b)(11))	Y	NA	N
<i>If agency is a board, commission or committee within the Department of Consumer Affairs (DCA), has the agency included a certification that it has complied with Business & Professions Code 313.1 and either DCA director has approved the regulation or the agency board/commission/committee has overridden director's disapproval by unanimous vote? (Business & Professions Code 313.1(e)(3))</i>	Y	NA	N
12. UPDATED INFORMATIVE DIGEST (UID)			
Is a UID included in the rulemaking file? (11347.3(b)(2))	Y	NA	N
If the applicable laws or effect of the regulations have changed since the notice was published, does the UID include (1) an updated summary of those laws and regulations, <i>if any</i> , directly related to the proposed rulemaking action and (2) its effect? (11346.9(b))	Y	NA	N
-- <i>If an updated summary is necessary</i> , is the format similar to the Legislative Counsel's Digest? (11346.9(b))	Y	NA	N
If there have been no changes to the underlying laws or to the effect of the proposed action, is there a statement indicating this?	Y	NA	N

13. FINAL STATEMENT OF REASONS (FSR)			
Is FSR included in the rulemaking file? (11346.9(a))	Y		N
Does FSR update information in ISR? (11346.9(a)(1))	Y		N
<i>If update identifies any material relied upon that was not available for public review prior to close of public comment period(s), was new 15-day notice and comment period provided? (11346.9(a)(1); 11347.1) (See "Availability of Relied Upon Material" block above in # 9)</i>	Y	NA	N
Does FSR include a determination whether the regulations impose a mandate upon local agencies/school districts? (11346.9(a)(2))	Y		N
--Is a mandate imposed?	Y		N
-- <i>If "yes,"</i> is a statement included whether it is reimbursable under 17500-17630?	Y	NA	N
-- <i>If "not reimbursable,"</i> is the reason why included?	Y	NA	N
Does it include a determination, with supporting evidence, that no alternative would be more effective or as effective and less burdensome to affected persons? (11346.9(a)(4))	Y		N
INCORPORATION BY REFERENCE			
Was/were the document(s) or form(s) available upon request from the agency, or reasonably available from a commonly known or specified source? (1 CCR 20(c)(2))	Y	NA	N
-- <i>If "no,"</i> does the regulation specify how a copy may be obtained? (1 CCR 20(c)(2))	Y	NA	N
Does FSR demonstrate that publication of incorporated document in full in CCR would be cumbersome, unduly expensive, or otherwise impractical? (1 CCR 20(c)(1))	Y	NA	N
Is a SUMMARY of each comment received during a comment period specifically directed at the proposed regulation or at procedure followed by the agency included? (11346.9(a)(3))	Y	NA	N

Is a RESPONSE explaining how proposal was amended to accommodate comment OR explaining a reason for rejecting comment included? (11346.9(a)(3))	Y	NA	N
--Are reasons included for rejecting proposed alternatives to lessen impact on small business, <i>if any</i> ? (11346.9(a)(5))	Y	NA	N
14. SUBSTANTIVE REQUIREMENTS			
AUTHORITY (11349(b); 11342.1; 11342.2; 1 CCR 14): Are citations specific, accurate and complete?	Y		N
Is there express or implied statutory or constitutional authority to adopt, amend or repeal the proposed regulation?	Y		N
Are there any public comments challenging the agency's "authority"? (1 CCR 14(c)(1)(B))	Y		N
Does the regulation alter, amend, or enlarge a statute? (1 CCR 14(c))	Y		N
Does a statute provide specific authority to impose fine or imprisonment, or both? (11145)	Y	NA	N
<i>If intended to promote fire and panic safety or provide fire protection and prevention, including fire suppression systems, equipment or alarms, has it been approved by State Fire Marshal? (11359(a))</i>	Y	NA	N
<i>--If "no," is the regulation expressly required to be at least as effective as federal standards pursuant to 11359(b)?</i>	Y	NA	N
REFERENCE (11349(e); 1 CCR 14(b)): Are citations specific, accurate and complete?	Y		N
CONSISTENCY (11342.2, 11349(d)): Is the regulation consistent with statutes enforced or administered by submitting agency?	Y		N
Do the regulations conflict with the Public Records Act? (Government Code 6250-6270)	Y	NA	N
Do the regulations conflict with the Information Practices Act? (Civil Code 1798)	Y	NA	N
Are the regulations consistent with other applicable statutes or regulations?	Y	NA	N
CLARITY (11349(c); 1 CCR 16):			
Does the regulation use language correctly, including spelling, grammar and punctuation?	Y		N
Does the regulation use citation styles that clearly identify published	Y		N

material?			
Does the regulation present information that is readily understandable by those directly affected?	Y		N
Can the regulation on its face be reasonably and logically interpreted to have more than one meaning?	Y		N
Does the language of the regulation conflict with the agency's description of the effect of the regulation?	Y		N
Does the regulation use terms that do not have meaning generally familiar to those directly affected (and the terms aren't defined in the regulation or governing statute)?	Y		N
NONDUPLICATION (11349(f); 11346.2(b)(5); 1 CCR 12): Does the regulation repeat or rephrase in whole or in part a state or federal statute or regulation?	Y		N
-- <i>If “yes,”</i> do any of these exceptions apply: Exceptions (1 CCR 12 (b)): (1) Necessary to satisfy clarity standard --Is justification as specified in 1 CCR 12 (b)(1) included?	Y	NA	N
(2) Federally mandated regulation (1 CCR 12 (b)(2)) --Does agency meet requirements of 11346.9(c)?	Y	NA	N
(3) Mandated or authorized by provision of law --Statement identifying duplicated or overlapped statute or regulation and provision of law in citation style which permits or mandates duplication or overlap is included? (1 CCR 12 (b)(3)(A) and (B))	Y	NA	N
NECESSITY (11349(a); 1 CCR 10): Does the record demonstrate by <i>substantial evidence</i> that each provision is reasonably necessary to effectuate the purpose of the provision of law it implements, interprets, or makes specific? See #7: <i>Initial Statement of Reasons</i> .	Y		N
<i>If submitted by CalEPA or a rulemaking entity within CalEPA, are scientific portions of the regulation peer reviewed? (Health & Safety Code 57004)</i>	Y	NA	N