

About the Emergency Rulemaking Process

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What is the emergency rulemaking process?

The emergency rulemaking process generally includes a brief public notice period, a brief public comment period, review by OAL and an OAL decision. In addition, some agencies have requirements related to emergency rulemakings that are unique to that particular agency.

If you have specific questions about the emergency regulation process, contact the OAL Reference Attorney at (916) 323-6815 or at staff@oal.ca.gov.

What constitutes an emergency?

An “emergency” means a situation that calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare. (Government Code section 11342.545.) In order for an emergency regulation to be approved, an emergency situation must be shown to exist.

How does an agency demonstrate that an emergency situation exists?

Unless a situation is expressly deemed in statute to meet the emergency standard, an agency must make a finding of emergency by describing specific facts supported by substantial evidence that demonstrate the existence of an emergency and the need for immediate adoption of the proposed regulation. In addition, if the emergency existed and was known by the agency in sufficient time to have been addressed through nonemergency regulations, the finding of emergency shall include facts explaining the failure to address the situation through nonemergency regulations. A finding of emergency based only upon expediency, convenience, best interest, general public need, or speculation, is not adequate to demonstrate the existence of an emergency. (Government Code section 11346.1(b)(2).)

How may the public comment on a proposed emergency rulemaking action?

Emergency rulemakings have a five calendar day comment period that begins when OAL posts the notice of the pending emergency action on the OAL web site. OAL may approve an emergency rulemaking without public comment if “the emergency situation clearly poses such an immediate, serious harm that delaying action to allow public comment would be inconsistent with the public interest.” (Government Code section 11349.6(b).)

Comments on a proposed emergency rulemaking action must be submitted directly to OAL within five calendar days from when OAL posts the proposed emergency regulation on the OAL web site. Comments on a proposed emergency rulemaking action should be submitted to the OAL Reference Attorney by mail to 300 Capitol Mall, Suite 1250, Sacramento, California 95814, by fax to (916) 323-6826, or by e-mail to staff@oal.ca.gov. When submitting a comment on an emergency rulemaking action, a copy of the comment must also be submitted to the rulemaking agency’s contact person. OAL will confirm that the agency has received the comment before considering it. The comment must state that it is about an emergency rulemaking action currently under OAL review and include the topic of the emergency. (Title 1, CCR, section 55(b)(1) through (4).)

The rulemaking agency is not required to respond to comments submitted in connection with an emergency rulemaking action. If the agency chooses to respond, however, it must submit its response to OAL within eight calendar days after the date of submission of the proposed emergency rulemaking action to OAL (Title 1, CCR, section 55), unless specific exceptions apply.

What must the rulemaking agency submit to OAL for review in an emergency rulemaking action?

The agency proposing an emergency regulation must include the following in the file submitted to OAL (Title 1, CCR, section 50):

1. Proposed Emergency Regulation Text and STD. Form 400 (7 copies). (Government Code section 11346.1(b)(2); Title 1, CCR, section 6.)
2. Finding of Emergency (1 copy)
3. Agency statement of specific facts demonstrating existence of emergency and by substantial evidence need for immediate action (unless deemed an emergency by statute). (Government Code Section 11346.1(b)(2).)
4. Information required by Government Code Section 11346.5(a), including:
 - Authority and Reference citations
 - Informative Digest
 - Specific Agency Statutory Requirements
 - Local Mandate Determination
 - Fiscal Impact Estimate and Form 399
5. Identification of each technical, theoretical, and empirical study, report, or similar document, if any, upon which the agency relies. (Government Code section 11346.1(b)(2).)
6. Facts explaining the failure to address the situation through nonemergency regulations (only necessary if the emergency existed and was known by the agency in sufficient time to have been addressed through nonemergency regulations). (Government Code section 11346.1(b)(2).)

What is OAL's review process for the proposed emergency rulemaking?

OAL has 10 calendar days within which to review and make a decision on the proposed emergency rulemaking file. If OAL approves the emergency rulemaking, OAL will file the approved regulation with the Secretary of State. If OAL disapproves the regulation, it must write a decision explaining the reasons for disapproval.

OAL reviews the file for the following (Government Code section 11349.6(b).):

1. Does the agency's finding of emergency demonstrate that the situation addressed by the regulations is an emergency?
2. Do the proposed emergency regulations comply with the six substantive standards of Government Code section 11349.1?
3. Did the agency comply with the procedural requirements of Government Code section 11346.1?

What is the effective period of an approved emergency regulation?

An emergency regulation usually becomes effective when filed with the Secretary of State. An emergency regulation generally remains in effect for 180 days unless OAL approves a readoption of the emergency regulation during that time period. If an agency requests a readoption of an emergency, it should be submitted to OAL at least 10 calendar days prior to the expiration of the emergency effective period to avoid the possibility that the regulation lapses by operation of law during OAL's 10-day review. If approved by OAL, the emergency readoption extends the emergency regulation for an additional 90 days; however, no more than two readoptions are permitted. (Government Code section 11346.1(h).)

Can an emergency regulation become permanent?

Yes. An emergency regulation can become permanent if the agency adopts the emergency regulation through the regular rulemaking process within the time period the emergency regulation is in effect. This is commonly referred to as filing a "certificate of compliance." When the agency submits a timely certificate of compliance to OAL, the emergency regulation stays in effect during OAL's review. OAL reviews the certificate of compliance action to ensure it satisfies all APA requirements for a regular rulemaking. (Government Code section 11346.1(e).) OAL has 30 working days to review a certificate of compliance.

If a certificate of compliance is submitted, the maximum time period for OAL review is 30 working days, although OAL may act earlier. A proposed rulemaking submitted with a certificate of compliance usually becomes effective on filing by OAL with the Secretary of State.

