

OAL CHECKLIST FOR GOVERNMENT CODE SECTION 11353 FILINGS

OAL File No. ____ - ____ - ____ Agency: _____

Reviewer: _____

Note: (All citations are to the Government Code, unless otherwise specified.)
 11353 filings are subject to 11349 and 11349.1(a) (Standards), 11349.3 (Approval or Disapproval), 11349.4 (Resubmittal of Disapproved Filings), 11349.5 (Appeal to Governor), 11350.3 (Judicial Declaration of Validity) to extent not inconsistent with 11353. 11353(b)(4). OAL shall restrict its review to the regulatory provisions and the administrative record of the proceeding. 11353(b)(4).

REQUIREMENT	OK?	PROBLEMS
FORM 400		
Name of agency set out in AGENCY box?		
Subject/topic described in SUBJECT or TOPIC box?		
TITLE 23 and section number listed?		
TYPE OF FILING correctly specified? E.g., basin plan amendment, state policy, guideline.		
RESUBMITTAL FILING ONLY: Previously disapproved reg. resubmitted within 120 days of agency's receipt of decision of disapproval? Or, extension granted by Director for good cause? (11349.4) Resubmittal must: Identify prior file by date of submission? Specify parts of prior file incorporated into the resubmittal or submit copy of prior file if returned? 11349.4(c); 1 CCR 84.		
EFFECTIVE DATE: effective upon approval by OAL pursuant to 11353(b)(5)?		
Name of CONTACT PERSON and TELEPHONE #?		
SUMMARY		
Summary of the regulatory provisions attached to original and six copies of Form 400? 1 CCR 6.		
<ul style="list-style-type: none"> • Summary clear? • Summary concise? • Summary include all regulatory provisions adopted or approved? 11353(b)(2)(A). 		

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<p>CERTIFICATION</p>	
<p>Certification by the chief legal officer of the SWRCB or his or her written delegate that the action was taken in compliance with all applicable procedural requirements of Division 7 (commencing with Section 13000) of the Water Code? 11353(b)(2)(D).</p>	
<p>ADMINISTRATIVE RECORD</p>	
<ul style="list-style-type: none"> • Notice? Water Code 13147, 13244, 40 CFR 25.5(b) • Text of proposed regulatory provisions made available to the public? Water Code 13147, 13170, 13244, 13245, 40 CFR 25.5. • Summary of the necessity for the regulatory provisions? 11353(b)(2)(C). (May be in the staff report/functionally equivalent document.) • CEQA documents? The SWRCB and regional board Water Quality Control (Basin)/208 Planning Program (14 CCR 15251(g)) and the SWRCB instream beneficial use protection programs (14 CCR 15251(f)) are exempt from Chapter 3 of CEQA (EIRs and Negative Declarations However all and other CEQA requirements apply. See 14 CCR 15252 and Appendix G to CEQA Guidelines (Environmental Checklist) for substitute document requirements. • Demonstration of consultation with agencies having jurisdiction over affected natural resources. Public Resources Code 21080.3. Department of Fish and Game, State Lands Commission, Parks and Recreation, University of California. 14 CCR 15386. • Demonstration of compliance with peer review requirements for scientific portions of regulatory provisions? Health and Safety Code 57004? • All material relied upon? 11353(b)(2)(B). (Note: may be different than material considered.) • All comments included? 40 CFR 25.10(a). • Responses to comments? 40 CFR 25. 	

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<ul style="list-style-type: none"> • Transcript, recording, or other complete record of public hearing(s). Water Code 13147, 13170,13244, 13245, 40 CFR 25.5. • Text finally adopted by the regional board or the state board. (Note: The rulemaking agency for regional water quality control plans is the regional board, except for revisions adopted by state board pursuant to Water Code 13245.) <p>(The reviewer should make a copy of the full text of the regulatory provisions as adopted by the regional board or the state board for use in review and inclusion in the OAL working file.)</p> <ul style="list-style-type: none"> • Documentation of state board approval of regional water quality control plan provisions adopted by a regional board. Water Code 13245. (Typically a workshop, then a state board meeting.) • Is record complete? 11353(b)(2)(B). 	
RESPONSE TO PUBIC COMMENT	
<p>Responses to public comments must comply with the public participation requirements of the Federal Water Pollution Control Act (33 U.S.C. Sec. 1251 et seq.). 11353(b)(4). Public participation shall be provided for, encouraged and assisted. 33 U.S.C. Sec. 1251(e). State rulemaking under the Clean Water Act is subject to 40 CFR Part 25. 40 CFR 25.2(a).</p> <ul style="list-style-type: none"> • Has the rulemaking agency summarized the public's views, significant comments, criticisms and suggestions; and set forth the agency's specific responses in terms of modifications of the proposed action or an explanation for rejection of proposals made by the public? 40 CFR 25.8. • Does response demonstrate that public viewpoints and preferences have been considered by the decision-making official? 40 CFR 23.3(b). 	
SUBSTANTIVE REQUIREMENTS	
<p>AUTHORITY 11349(b), 11342.2; 1 CCR 14. and REFERENCE 11349(e); 1 CCR 14(b).</p> <ul style="list-style-type: none"> • Does regulatory provision alter, amend, or enlarge power conferred by state statute? 	

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<p>CONSISTENCY (11349(d))</p> <ul style="list-style-type: none"> • Are the regulatory provisions exempt from the APA per 11353? • Statute(s) implemented, interpreted, or made specific by the provision, including applicable federal statutes and regulations? • CEQA (Public Resources Code 21000, 21080.5; 14 CCR 15000, 15250, 15307, 15308). Comply with CEQA's policies, evaluation criteria and standards? The required environmental review must address all activities and impacts associated with a project. <i>Laupheimer v. California</i> (1988) 200 Cal. App. 3d 440, <i>Environmental Protection Information, Center, Inc. v. Johnson</i> (1985) 170 Cal. App. 3d 604. • Permit Reform Act. (15371-15378) • Public Records Act. (6250-6267) • Information Practices Act. (Civil Code 1789) • Bagley-Keene Open Meeting Act. (11120-11132) • <i>Other applicable statutes or regulations?</i> <p>CLARITY (11349(c); 1 CCR 16)</p> <p>X Presumed unclear? See 1 CCR 16.</p> <p>X Title of a document (including a form) incorporated by reference clearly set out? Part of the document incorporated, if appropriate? 1 CCR 20(c)(5).</p> <p>X Statement in text that document, or part, is incorporated by reference?</p> <p>X Statement in text of revision date (or other specific identifier) of the particular version incorporated? <i>EXCEPTION</i>: No date required if authorizing statute requires adoption/enforcement of incorporated provision and any subsequent amendments. 1 CCR 20(c)(4).</p> <p>NONDUPLICATION (11349(f), 11346.2(b)(6); 1 CCR 12)</p> <p>NECESSITY (11349(a); 1 CCR 10)</p> <p>X Does totality of the record considered by the rulemaking agency demonstrate by substantial evidence that all provisions are reasonably necessary? 11349, 11349.1(a), 1 CCR 10.</p> <p>X Scientific portions of regulation peer reviewed?</p>	
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Health & Safety Code 57004.	
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