

**California Secretary of State
Proposed Regulatory Action:
CAL-ACCESS Software Vendor Certification
Addendum to Initial Statement of Reasons**

The factual basis and rationale of the following sections of the proposed regulations are modified as follows:

Unless otherwise stated, these statements address modifications to the originally proposed text pursuant to the Amended Proposed Regulation Text, which was submitted for a 15-day public comment on October 15, 2020.

Section 23001. Purpose.

A period is added to the end of the section title. This is a non-substantive change.

A reference is added to Section 84602, Government Code. This reference was inadvertently omitted from the originally noticed Text of Proposed Regulations because the code cited was the same as the Secretary of State's authority for promulgating these regulations. The purpose of this reference is to cite to the provision of law which these regulations implement, interpret, or make specific. This citation is necessary to comply with Government Code section 11349.1 and Title 1, California Code of Regulations, section 14.

23002. Definitions.

A period is added to the end of the section title. This is a non-substantive change.

Subdivision (c). The definition of "CAL-ACCESS" is updated to remove certain descriptors about who submits information to the system and who can access that data, replacing those descriptors with references to statute. The purpose of this change is to more accurately reflect the functionality of the system as described in statute. This change is necessary to avoid ambiguity of whether this definition refers to something other than the system referenced in statute. The purpose and necessity of this provision as stated in the Initial Statement of Reasons is otherwise unchanged.

Subdivision (d). The following information adds to the purpose and necessity statement in the Initial Statement of Reasons. The electronic filing specifications define the order and contents of the electronic filing data files that will be accepted and processed by CAL-ACCESS. The Electronic Filing Specifications list the field names, field length, certain codes, and other technical information necessary to ensure data is transmitted properly over the API. For example, the Electronic Filing Specifications state that "GOV" is a code to be used for a field that would state "Governor." The specific layouts and other information required by the Electronic Filing Specifications are derived from the data requirements in these regulations, regulations promulgated by the Fair Political Practices Commission related to the Political Reform Act of 1974, and related statutory provisions. The Electronic Filing Specifications are not regulatory itself beyond the requirement that data sent over the API must conform to be properly

transmitted and filed in CAL-ACCESS. Those regulatory provisions exist in these regulations, not the Electronic Filing Specifications. The Electronic Filing Specifications are not incorporated by reference because it is not regulatory and because it may be necessary for the Secretary of State to make changes to it from time to time to correct data issues, to accommodate system improvements or system modifications, and to update fields to conform to updated laws or regulations. The Electronic Filing Specifications would not be regulatory in cases where changes in law or regulation are made, but just an implementation of a regulatory or statutory requirement. It may be that data is not transmitting accurately over the API due to an error in the Electronic Filing Specifications, and so changes may be necessary that would need to be done in advance of the time it would take for a regulation to incorporate a new version of the Electronic Filing Specifications. If a law or regulatory change required an update to the Electronic Filing Specifications, those changes would be done by separate process that software vendors could be involved in, so not updating the Electronic Filing Specifications by regulation would not harm software vendors. The Electronic Filing Specifications, beyond the regulatory requirement that software vendors send data that conforms to it which is contained elsewhere in these regulations, do not materially alter the rights or responsibilities of software vendors.

Subdivision (d). Additional explanation is added to this definition to describe how the Electronic Filing Specifications may be periodically updated. The new explanation is text that was included in the initially noticed regulation text at Section 23005, subdivision (a), and is now moved here. This move was made because this is non-regulatory explanatory text that is more appropriately included as part of the definition. The text that was originally present in Section 23005, subdivision (a) is slightly modified as presented here. The phrase “these changes may be” is replaced with “periodic updates may be needed” to remove any potential ambiguity between the words “updates” and “changes,” tying in with the earlier part of the definition of “electronic filing specifications.” The word “system” is removed from the reference to periodic updates because the earlier definition improperly used the term “system” that is defined as the software vendors’ electronic filing system rather than the CAL-ACCESS system that was the intended reference here. The term “revised business practices” is removed to remove an ambiguous term. The words “changes in” are added to the list, and the list is separated out by semicolons instead of a mix of semicolons and commas to improve readability and avoid confusion; these changes are non-substantive. The list item “or other system modifications” is removed as it is repetitive of the first list item, “system improvements or modifications.” The first list item is inclusive of “other system modifications,” so this removal prevents confusion about whether it was referring to another type of update.

Subdivision (e). The words “maintained by a software vendor” are added to this definition to clarify any potential ambiguity about whose system this definition applies to. This additional information makes it clear that the definition of “electronic filing system” directly relates to the definition of “software vendor” in subdivision (g): the software vendor is a person or entity that maintains a system, and that system is one maintained by that person or entity.

A reference is added to Section 84602, Government Code. This reference was inadvertently omitted from the originally noticed Text of Proposed Regulations because the code cited was the same as the Secretary of State’s authority for promulgating these regulations. The purpose of this reference is to cite to the provision of law which these regulations implement, interpret, or make

specific. This citation is necessary to comply with Government Code section 11349.1 and Title 1, California Code of Regulations, section 14.

23003. Software Vendor Certification.

A period is added to the end of the section title. This is a non-substantive change.

Subdivision (b), paragraph (1). The following information adds to the purpose and necessity statement in the Initial Statement of Reasons. The purpose of an application is to provide a means for software vendors to provide the information necessary to pursue certification and to ensure that software vendors provide all the information Secretary of State staff will need for the certification process. An application is necessary to ensure an efficient application process.

Subdivision (b), paragraph (1). Details about the content of the application are added. The purpose of adding these details is to ensure the regulations capture the full content of the application. This change is necessary to ensure the Secretary of State can enforce the application requirement on software vendors based on regulatory authority. The specific application contents are provided in sub-paragraphs as follows:

(A) This sub-paragraph requires the software vendor to provide information about its business. The purpose of requiring this information is so the Secretary of State can display information about certified software vendors to the public. This provision is necessary to ensure software vendors applying for certification include information about their business that the Secretary of State can provide to the public.

(B) This sub-paragraph requires the software vendor to provide a point of contact for questions relating to certification. The purpose of this requirement is so that the Secretary of State can contact a specific person as part of the certification process. This requirement is necessary to ensure each software vendor applying for certification provides this contact information to the Secretary of State.

(C) This sub-paragraph requires the software vendor to provide the name and version number of the electronic filing system they are certifying. The purpose of this requirement is for the software vendor to provide this information. This requirement is necessary so the Secretary of State approves specific major releases of electronic filing systems and so that the Secretary of State can inform the public about what version of an electronic filing system is certified. This requirement references major release versions rather than smaller releases to prevent software vendors from having to certify small changes to their system, while requiring certification of major changes to their system. This ensures that the Secretary of State can initiate appropriate testing of modified electronic filing systems to ensure accurate transmission of data over the API.

(D) This sub-paragraph requires the software vendor to provide information on whether this is an initial electronic filing system certification, re-application, or update of a previous certification. The purpose of this requirement is for the software vendor to reference any previous certification they may have with CAL-ACCESS. This requirement is necessary to ensure an efficient certification process, so that the Secretary of State can identify the purpose of certification applications and initiate appropriate work flows, such as the comprehensive work flow for a new electronic filing system or an expedited review of an existing electronic filing system that only requires looking at changes.

(E) This sub-paragraph requires the software vendor to indicate what Fair Political Practices Commission forms it intends to file over the API. Electronic filing systems may be certified for some or all Fair Political Practices Commission forms included in the API. The Secretary of State will only test and certify the Fair Political Practices Commission forms the software vendor requests be certified. This requirement is necessary so that software vendors provide their intention for the specific certification application.

(F) This sub-paragraph requires the software vendor to sign the application and agree to all applicable procedures. This requirement refers to “all applicable certification procedures” to reference the contents of the certification application and these regulations. The purpose of this signature requirement is that software vendors affirmatively state they agree to these procedures and to show that they are the person submitting the application. This requirement is necessary to ensure an efficient certification process.

(G) This sub-paragraph requires the software vendor to agree to various requirements of certification. This sub-paragraph summarizes the requirements of these regulations. The purpose of this requirement is for software vendors to affirmatively acknowledge these requirements. This requirement is necessary so that software vendors are aware of the requirements in these regulations and that they are on record as acknowledging them.

1. This list item requires agreement to conduct interface testing. The purpose of this requirement is that such testing is necessary as part of the certification process and so a software vendor seeking certification must do this. Interface testing is necessary to ensure the electronic filing system and CAL-ACCESS properly communicate with each other through the API and that data is correctly transmitted.

2. This list item requires agreement to design the electronic filing system that complies with the latest Electronic Filing Specifications. The agreement states that it relates to those that are in effect at the time of certification. The purpose of this requirement is that the design must relate to the Electronic Filing Specifications currently in effect, which will be used for testing and for data transmission if and when the electronic filing system is certified. This agreement is necessary to ensure software vendors seeking certification design their electronic filing system properly and understand what Electronic Filing Specifications they need to design to.

3. This list item requires agreement to design the electronic filing system that complies with the provision of the Political Reform Act related to a data-driven means or method of filing. The purpose of designing the electronic filing system in this manner is to clarify statutory requirements and ensure software vendors send data in a way that CAL-ACCESS can properly store and display it. This agreement is necessary to ensure software vendors seeking certification design their electronic filing system properly in accordance with the statutory requirements of CAL-ACCESS to which they are transmitting data.

4. This list item requires agreement to design the electronic filing system that complies with the statutory provisions related to electronic signatures. CAL-ACCESS requires electronic signatures to be the sole signature for filings; there is no second signature, such as one sent on a paper form to back up the electronic filing. The purpose of this agreement is that software vendors understand this statutory requirement and send appropriate information to indicate an electronic signature has been captured. This agreement is necessary to ensure software vendors seeking certification design their

electronic filing system properly in accordance with the statutory requirements of CAL-ACCESS to which they are transmitting data.

5. This list item requires an electronic filing system design consistent with the security provisions in these regulations. The purpose of requiring software vendors to agree to this is to ensure they understand the regulatory requirements. This list item is necessary to avoid confusion about whether and how these security requirements apply.

6. This list item requires software vendors to agree to the data storage requirements in these regulations. This list item is necessary to avoid confusion about whether and how these data storage requirements apply.

Subdivision (b), paragraph (2). This paragraph is removed. The content of this paragraph is duplicative with the information in paragraph (1), sub-paragraph (G), item 2. This item is combined with the content from this paragraph to avoid confusion about potentially different requirements that are intended to be the same.

Subdivision (b), paragraph (3). This paragraph is removed. The content of this paragraph is duplicative with the information in paragraph (1), sub-paragraph (G), item 3. This item is combined with the content from this paragraph to avoid confusion about potentially different requirements that are intended to be the same. The reference to Government Code Section 84602 is amended to state the specific provision of that code section. This is a non-substantive change as the higher level statute referenced is the same. This amendment clarifies the location in this lengthy statute that the regulations reference and is necessary for clarity of these regulations. The purpose and necessity of this provision as stated in the Initial Statement of Reasons is otherwise unchanged.

Subdivision (b), paragraph (4). This paragraph is removed. The content of this paragraph is duplicative with the information in paragraph (1), sub-paragraph (G), item 4. This item is combined with the content from this paragraph to avoid confusion about potentially different requirements that are intended to be the same.

Subdivision (b), paragraphs (5) and (6). These paragraphs are renumbered as (2) and (3) respectively to reflect accurate numbering after the removal of the previous paragraphs (2), (3), and (4). This is a non-substantive change.

Subdivision (b), renumbered paragraph (2). The sub-paragraph numbering is changed from lower case roman numerals to upper case letters. This non-substantive change is made for conformity with other Secretary of State regulations in Title 2, Division 7 of the California Code of Regulations.

Subdivision (b), renumbered paragraph (3). The sub-paragraph numbering is changed from lower case roman numerals to upper case letters. This non-substantive change is made for conformity with other Secretary of State regulations in Title 2, Division 7 of the California Code of Regulations.

Subdivision (b), renumbered paragraph (3), renumbered sub-paragraph (B). The following information adds to the purpose and necessity statement in the Initial Statement of Reasons. The

purpose of requiring software vendors with web-based electronic filing systems to save a copy of filed data is to ensure that this data is stored in case it is needed to verify filed data at a later time, for example to address discrepancies in data in the system and what the filer says they filed through the electronic filing system. This data storage is necessary to allow entities investigating filer activity to verify underlying data that was not submitted directly to CAL-ACCESS. This verification may also be necessary to correct data that may have been transmitted erroneously over the API for any reason. The requirement for software vendors for web-based systems to back up this information is because the software vendors will have access to this data so they are the best placed to store it and provide it to investigating entities when necessary.

Subdivision (b), renumbered paragraph (3), renumbered sub-paragraph (C). The following information adds to the purpose and necessity statement in the Initial Statement of Reasons. The purpose and necessity of this sub-paragraph is similar to that in sub-paragraph (B), except that there are differences for desktop-based software. For such software, the software vendor may not have access to the filed data and so will not be in a position to store it. This requirement therefore states that the desktop-based system shall be developed to allow saving to the filer's device. This provision also clarifies that the software vendor is not responsible for filers who delete this data, which insulates them from liability for filer actions they cannot control.

Subdivision (f). The dashes in the first sentence are replaced with commas as a non-substantive stylistic change. The term "independently certify" is replaced with "be independently certified." The term "certify" is replaced with "be certified." These are non-substantive stylistic changes. The revised language more accurately states that the Secretary of State certifies software vendors, not the other way around.

Subdivision (g). The following information adds to the purpose and necessity statement in the Initial Statement of Reasons. The purpose of this provision is to ensure software vendors maintain compliance with the applicable requirements, and to state those requirements. This provision is necessary so that software vendors are aware of this ongoing requirement and are aware that failure to comply with these requirements can result in de-certification. If a software vendor does not maintain compliance with these requirements, then the data transmitted over the API may not be compliant with the Political Reform Act of 1974. This could result in inaccurate data filed, which creates a liability for filers who send inaccurate or incomplete data and limits public disclosure of the information in CAL-ACCESS. De-certification procedures are not delineated here as they exist elsewhere in the regulations, and so a reference to those procedures is provided for reference.

A reference is added to Section 84602, Government Code. This reference was inadvertently omitted from the originally noticed Text of Proposed Regulations because the code cited was the same as the Secretary of State's authority for promulgating these regulations. The purpose of this reference is to cite to the provision of law which these regulations implement, interpret, or make specific. This citation is necessary to comply with Government Code section 11349.1 and Title 1, California Code of Regulations, section 14.

23004. Certified Software Vendor Security.

The section heading is modified to add the word “Certified.” This is made for clarity purposes, to indicate that this requirement only applies to software vendors who have been certified.

A period is added to the end of the section title. This is a non-substantive change.

Subdivision (a); subdivision (b); subdivision (c); subdivision (d); subdivision (e); and subdivision (f). The word “certified” is added to “software vendor.” This is made for clarity purposes, to indicate that this requirement only applies to software vendors who have been certified.

Subdivision (b). The words “training related to protecting filer information” is added to the annual privacy training requirement. A description of how security awareness training relates to the electronic filing system and filer data is added. Both of these changes reflect the purpose of these training requirements as they relate to data transmitted over the API. Privacy training ensures that software vendor staff and contractors are aware of the sensitive nature of the data filers provide them to transmit over the API and to retain in their system pursuant to these regulations. It is important that these people understand what data needs to be protected and why, and to take appropriate measures to keep the data protected. Security awareness training ensures that software vendor staff and contractors protect their electronic filing systems from data theft, corruption, and other security risks that could expose sensitive filer information or compromise the data sent through the API or retained by the software vendor pursuant to these regulations.

Subdivision (d). This subdivision is updated to clarify that the sub-paragraphs are list items that flow from the higher level requirement. The verbiage of the sub-paragraphs is updated to match the grammatical structure of the higher level requirement. This is a non-substantive change made for clarity and ease of reading.

A reference is added to Section 84602, Government Code. This reference was inadvertently omitted from the originally noticed Text of Proposed Regulations because the code cited was the same as the Secretary of State’s authority for promulgating these regulations. The purpose of this reference is to cite to the provision of law which these regulations implement, interpret, or make specific. This citation is necessary to comply with Government Code section 11349.1 and Title 1, California Code of Regulations, section 14.

23005. System Changes.

A period is added to the end of the section title. This is a non-substantive change.

Subdivision (a). The second sentence of this subdivision is moved to the Section 23002, subdivision (d), which defines Electronic Filing Specifications. This sentence is descriptive of how Electronic Filing Specifications may be modified rather than describing a regulatory purpose for changing them. This description is more appropriately included with the definition of the term.

Subdivision (b); subdivision (c); and subdivision (d). The word “certified” is added to “software vendor.” This is made for clarity purposes, to indicate that this requirement only applies to software vendors who have been certified.

A reference is added to Section 84602, Government Code. This reference was inadvertently omitted from the originally noticed Text of Proposed Regulations because the code cited was the same as the Secretary of State’s authority for promulgating these regulations. The purpose of this reference is to cite to the provision of law which these regulations implement, interpret, or make specific. This citation is necessary to comply with Government Code section 11349.1 and Title 1, California Code of Regulations, section 14.

23006. Bugs or Defects.

A period is added to the end of the section title. This is a non-substantive change.

Subdivision (b). The word “serious” is removed to correct an error in the originally noticed text of proposed regulations. The logging requirement applies to all bugs or defects, not just serious bugs or defects. This correction clarifies the relationship between the logging requirement in subdivision (b) and the reporting requirement in subdivision (c): all bugs must be logged, but only serious bugs need to be reported to the Secretary of State.

Subdivision (d). A hyphen is removed between the words “mutually” and “agreed-on.” This is a non-substantive stylistic change.

Subdivision (d); subdivision (e); and subdivision (f). The word “certified” is added to “software vendor.” This is made for clarity purposes, to indicate that this requirement only applies to software vendors who have been certified.

A reference is added to Section 84602, Government Code. This reference was inadvertently omitted from the originally noticed Text of Proposed Regulations because the code cited was the same as the Secretary of State’s authority for promulgating these regulations. The purpose of this reference is to cite to the provision of law which these regulations implement, interpret, or make specific. This citation is necessary to comply with Government Code section 11349.1 and Title 1, California Code of Regulations, section 14.

23007. Continued Compliance Verification.

A period is added to the end of the section title. This is a non-substantive change.

Subdivision (a); subdivision (b); and subdivision (d). The word “certified” is added to “software vendor.” This is made for clarity purposes, to indicate that this requirement only applies to software vendors who have been certified.

Subdivision (a). The words “the requirements of the API and” are struck to remove an ambiguous requirement that is not fully described in the regulation. The intention of this language was to ensure that all data a software vendor attempted to transmit to the Secretary of

State came over a working API and that the data itself was compliant with the electronic filing specifications. This requirement is not a new requirement besides what is already stated in the other proposed regulation sections. Therefore, rather than clarifying this duplicative requirement, the language is struck and the requirement that compliance with this Article remains to cover what this language was intended to convey. This change is necessary for clarity, to avoid the inference that this requirement meant to do something other than restate other regulatory provisions.

Subdivision (d). The following information adds to the purpose and necessity statement in the Initial Statement of Reasons. The purpose of the provision for submitting data to the Secretary of State by alternate means is to state that this must be done and to state how it must be done. This provision is necessary to ensure software vendors continue to provide filed data to the Secretary of State when deficiencies cause data to not flow over the API. This ensures timely public disclosure of filed data and also ensures that filers are not liable for late filing of information that may not post in CAL-ACCESS until after applicable deadlines if the data is held without being filed until discrepancies are resolved. The provision that the Secretary of State provide the means to send this data is so that the Secretary of State can obtain the data in a way that allows it to quickly post it to CAL-ACCESS. If a software vendor sent the data to the Secretary of State in a manner the Secretary of State could not quickly input into CAL-ACCESS, public disclosure of filed data would be harmed since the public would not have timely access to filed data.

A reference is added to Section 84602, Government Code. This reference was inadvertently omitted from the originally noticed Text of Proposed Regulations because the code cited was the same as the Secretary of State's authority for promulgating these regulations. The purpose of this reference is to cite to the provision of law which these regulations implement, interpret, or make specific. This citation is necessary to comply with Government Code section 11349.1 and Title 1, California Code of Regulations, section 14.

23008. Software Vendor De-certification.

A period is added to the end of the section title. This is a non-substantive change.

Subdivision (a); subdivision (b); subdivision (c); subdivision (d); subdivision (e); and subdivision (f). The word "certified" is added to "software vendor." This is made for clarity purposes, to indicate that this requirement only applies to software vendors who have been certified.

Subdivision (a). The following information adds to the purpose and necessity statement in the Initial Statement of Reasons. The purpose of this provision is to state that the Secretary of State may unilaterally de-certify a software vendor whose electronic filing system is out of compliance with these regulations and who does not timely resolve any compliance issues. This provision is necessary due to the nature of CAL-ACCESS, which is a system for filing pursuant to the Political Reform Act of 1974 and for public disclosure of filed data. If a software vendor is sending non-conforming data over the API, then filings represented in CAL-ACCESS will not be accurate, and filings will therefore not reflect what filers intended to file. The data available to the public would also be inaccurate or incomplete. The Secretary of State, as a filing officer for

this data, must ensure the data in CAL-ACCESS is accurate and complete and this provision provides a necessary tool to do so. This is not a step that the Secretary of State would take lightly as it would significantly impact filers and their filing activities. Therefore, the remainder of Section 23008 describes procedures for avoiding de-certification.

Subdivision (c). The following information adds to the purpose and necessity statement in the Initial Statement of Reasons. The purpose of this provision is to allow software vendors to cure bugs or defects in advance of being de-certified. As stated in the purpose and necessity statement of subdivision (a), de-certifying a software vendor would have a significant impact on filers and their filing activities. De-certification would also have a negative impact on software vendors, potentially costing them significant income as filers stop paying them for filing services and likely causing reputational harm. Providing means to address filing issues without going to de-certification avoids these negative impacts.

Subdivision (d). The following information adds to the purpose and necessity statement in the Initial Statement of Reasons. This subdivision is necessity to protect software vendors from unreasonable decertification.

A reference is added to Section 84602, Government Code. This reference was inadvertently omitted from the originally noticed Text of Proposed Regulations because the code cited was the same as the Secretary of State's authority for promulgating these regulations. The purpose of this reference is to cite to the provision of law which these regulations implement, interpret, or make specific. This citation is necessary to comply with Government Code section 11349.1 and Title 1, California Code of Regulations, section 14.