

**California Secretary of State
Proposed Regulatory Action:
CAL-ACCESS Software Vendor Certification
Notice**

NOTICE IS HEREBY GIVEN that the California Secretary of State (SOS) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments in writing relevant to the action proposed. Written comments, including those sent by mail or e-mail to the address listed under Contact Persons in this Notice, must be received by the SOS at its office not later than August 3, 2020.

A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the contact persons listed below no later than 15 days prior to the close of the written comment period. Following the public hearing, if one is requested, or following the written comment period if no public hearing is requested, the SOS, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact persons and will be provided to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Public Comment Period: June 19, 2020 through August 3, 2020.

AUTHORITY AND REFERENCE

Government Code section 84602(b)(1) requires the SOS to develop an online filing and disclosure system that, among other criteria, ensures the security of data entered and stored in the system. Government Code section 84602(b)(2) requires the SOS to accept test files from software vendors and others wishing to file reports electronically. These regulations implement those statutory requirements.

Authority cited: Section 84602, Government Code.

References cited: Sections 11020, 81004, 82026, 84605, and 91000.5, Government Code; Section 1633.11, Civil Code.

INFORMATIVE DIGEST

As required by Government Code section 84602, in 1999 the SOS created CAL-ACCESS, a database and filing system used to make much of the lobbying and campaign finance information required by the Political Reform Act of 1974 (PRA) available online to the public at no cost to users. The system functioned well for years, but is now 20 years old, components of it are no longer supported by the vendor, and as a result the system has periodically crashed and denied public access. Senate Bill (SB) 1349 (Chapter 845, Statutes of 2016) modified Government Code

section 84602 to require the SOS to replace CAL-ACCESS with a new system that uses a data-driven means or method that allows filers to submit required filings free of charge in a manner that facilitates public searches of the data.

Pursuant to Government Code section 84602(b), the SOS has drafted these proposed regulations to address the requirement for the system replacing the current CAL-ACCESS, the CAL-ACCESS Replacement System (CARS), that software vendors be able to file reports electronically. The SOS consulted with software vendors in drafting these regulations.

The SOS is proposing to add Chapter 16 to the California Code of Regulations to establish a certification process for software vendors who wish to file electronically with the CARS through an Application Programming Interface (API) that the SOS is creating to achieve this electronic filing. The software vendors requested that the SOS include the option of filing through an API in the CARS system and the SOS agreed to make sure the system retained that feature. Filing through an API enables software vendors to file statements and reports rapidly for multiple clients near the filing deadlines. These regulations only apply to software vendors who file through the API, and do not apply to filers who file in the CARS by other means, such as by bulk upload or filing individually with the system.

Policy Statement Overview / Anticipated Benefits of Proposal

With the move to exclusive electronic filing, it is critical that the SOS ensures the information a filer attests to is what they had intended to file. This is especially important with CARS given that filers will submit statements and reports that comply electronically with the requirement to sign under penalty of perjury, but without original signatures. Under the PRA, candidates, treasurers and other filers are required to verify and sign under penalty of perjury that to the best of their knowledge the information they submit is true, complete and correct. It is necessary that the SOS ensure reports or statements filed through the API comply with this requirement. These regulations allow the SOS to specifically delineate how this shall be done. These regulations provide for a certification process for software vendors that protects the security of the data transmitted into CAL-ACCESS and delineates expectations on software vendors for providing data compliant and consistent with the PRA, including future amendments to that law. These regulations clarify the application and certification procedures for software vendors to use the API. This protects the software vendors because it spells out the certification and decertification process as well as how issues can be resolved. A regulation that requires software vendors to make changes to their software when necessary prevents them from holding up changes the SOS makes to CAL-ACCESS, including changes needed due to changes in the law.

In addition, Government Code section 84602(b)(2)(A) requires the Secretary of State to publish and make available to the public a list of software vendors who have submitted acceptable test files for the CARS system. Vendors who have completed the certification process will be published on this list. Further, vendors may be certified to submit information for some campaign or lobbying forms, but not the full suite of forms. Through the certification process, vendors can clearly designate which forms they are seeking approval to be able to file through the API.

The proposed regulations accomplish the mandate of Government Code section 84602. The benefit of these proposed regulations is that they will provide guidance to the SOS and software vendors on the procedure for being certified to use the API to transmit data electronically to the CARS. These regulations protect software vendors by preventing them from being unreasonably decertified as the law or CAL-ACCESS changes, and furthers the purposes of the PRA by ensuring only accurate data is transmitted over the API.¹

For further discussion of the benefit analysis, please see “Results of the Economic Impact Assessment”.

Consistency/Compatibility with Existing State Regulations

After conducting an evaluation for regulations in this area, the SOS has determined that these are the only regulations dealing with certifying software vendors to use the API. Therefore, the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

Documents Incorporated by Reference: None

Documents Relied Upon in Preparing the Regulations: None

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: No

Cost to Any Local Agency or School District for Which Government Code Sections 17500 - 17630 Require Reimbursement: None

Business Impact: The SOS has made an initial determination that the proposed regulatory action will have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. Numerous software vendors already electronically file with the existing CAL-ACCESS system. These regulations provide clarity for how they will continue those activities with the CARS. The new certification process is necessary to ensure compliance with the new data-driven method for filers to submit required filings, but does not significantly change the relationship between CAL-ACCESS and software vendors.

Significant Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability to Compete: The SOS has made an initial determination that this regulatory action will

¹ Software vendors transmitting accurate data over the API refers to sending data in the proper format that fills the right fields, and matches what the filer submitted to the vendor, among other things. (It does not refer to the correctness of the underlying dollar amounts and totals which the filer is responsible for reporting and verifying.)

not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Representative Private Person or Business: The SOS is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None

Effect on Small Business: The SOS recognizes that these regulations apply to small businesses insofar as current software vendors who file with the existing CAL-ACCESS are small businesses. However, the SOS has determined that these regulations will not impact those small businesses in any significant manner. The certification process provided for by these regulations is necessary to ensure the accurate transmission of data into the CARS, but does not significantly change the relationship between CAL-ACCESS and software vendors.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The proposed regulations accomplish the mandate of Government Code section 84602. The proposed regulations also further the SOS's dedication to making government more transparent and accessible in the areas of elections, business, political campaigning, legislative advocacy, and historical treasures. Lastly, these regulations protect the integrity of information to the public seeking government information electronically, as well as providing filers with a sound electronic filing process. As a result, this indirectly benefit the general welfare of California.

These proposed regulations will provide guidance to the SOS and software vendors on the procedure for being certified to use the API to transmit data electronically to the CARS. These regulations protect software vendors by preventing them from being unreasonably decertified as the law or CAL-ACCESS changes, and furthers the purposes of the PRA by ensuring only accurate data is transmitted over the API.

These regulations are not anticipated to create or eliminate jobs within the State of California, create or eliminate existing businesses within the State of California, or expand or eliminate existing businesses within the State of California. The benefits of these regulations are to comply with the legislative mandate for the SOS to allow software vendors to file reports electronically in the CARS.

The full Economic Impact Statement is presented in the Initial Statement of Reasons.

CONSIDERATION OF ALTERNATIVES

The SOS must determine that no reasonable alternative to the regulations it considered or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons or would be more cost-effective to affected private

persons and equally effective in implementing the statutory policy or other provision of law than the proposal described in this Notice.

The SOS considered the following alternatives:

- Allowing open access to the CARS API so that any party could use it to transmit data electronically to the system.
- Allowing software vendors to obtain access to the CARS API without being certified.
- Allowing for the electronic transmission of data into the CARS through an API or other methods, but requiring filers to log into the CAL-ACCESS system to verify the content of their submission before it can be submitted.

The SOS determined that a certification process for software vendors is the best option relative to those stated alternatives. Allowing open access to the API creates an unreasonably high risk that inaccurate data will be posted to CAL-ACCESS. This also creates an unreasonable risk of compromise to the information security of the CARS. Approving vendors without a regulatory certification process creates a less transparent process for software vendors to obtain access to the API. A regulatory process describes software vendors' responsibilities to the SOS and CAL-ACCESS, but more importantly delineates a neutral and non-arbitrary process for approval to use the API and procedures for de-certification. Requiring filers to log into CAL-ACCESS to verify their data before submission does not conform to past practice under the law of software vendors filing rapidly for multiple clients with CAL-ACCESS through a means external to logging in to CAL-ACCESS. The SOS will, however, offer an alternative means to submit data to the CARS that does not require software vendor certification. This is the bulk upload process, where filers will transmit the data in bulk and then log in to CAL-ACCESS to certify it. This option will be available to software vendors who choose not to make use of the API and related certification process for whatever reason.

Any interested person may present statements or arguments relevant to the above determinations.

AVAILABILITY OF THE INITIAL STATEMENT OF REASONS, THE TEXT OF PROPOSAL AND THE RULEMAKING FILE

The SOS has prepared an Initial Statement of the reasons for the proposed action and has available all the information upon which the proposal is based. The Initial Statement of Reasons is available on the SOS's website.

Copies of the express language of the proposed regulations, any document incorporated by reference, the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained throughout the rulemaking process upon request from the SOS contact or on the website listed below.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

A Final Statement of Reasons will be created after the closing of the public comment period. A copy of the final statement of reasons can be obtained once it has been prepared from the contact persons named below or by accessing the website listed below.

CONTACT PERSONS

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

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The backup contact person is:

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Website Access: Materials regarding this proposal can be found at:

<https://www.sos.ca.gov/administration/regulations/>