

Title	Administrative Record in CEQA Actions (adopt rules 3.1365, 3.1366, 3.1367, and 3.1368 of the California Rules of Court)
Summary	The proposed rules would provide a standardized format for electronic and paper versions of the administrative record in CEQA actions.
Source	Civil and Small Claims Advisory Committee Hon. Dennis M. Perluss, Chair
Staff	Susan R. McMullan, 415-865-7990, susan.mcmullan@jud.ca.gov
Discussion	<p>There are currently no statewide rules concerning the format or organization of the administrative record in actions brought under the California Environmental Quality Act (CEQA). Such records, which are the sole factual basis for the court’s review in CEQA cases at both the trial and appellate levels, are frequently voluminous and can be physically and organizationally challenging for a court to handle. Last year, the Civil and Small Claims Advisory Committee recommended a rule to provide a standardized format for the paper version of the administrative record in CEQA actions. When the rule circulated for public comment, many commentators requested that a similar rule be developed for an electronic version of the record. In response to these comments, this proposal provides rules for electronic as well as paper versions of the record.</p> <p>Actions brought under CEQA seek judicial review of a decision by a public agency approving an Environmental Impact Report (EIR) or determining that a project does not require either an EIR or any other environmental review. The challenge normally takes the form of either an administrative mandamus action under Code of Civil Procedure section 1094.5 or a traditional mandamus action under Code of Civil procedure section 1085. Under either statute, the trial court must review an administrative record of the proceedings of the public agency relating to its approval of the project, which is lodged with the court by the public agency or, more commonly, one of the parties. Because the statutory requirements for the content of the administrative record are very broad, the record is frequently voluminous, ranging from a few dozen pages for even the smallest project, to many hundreds of pages for most projects, to tens of thousand of pages for the largest projects.</p> <p>The proposed rules would provide a statewide standard to facilitate the court’s review. Rule 3.1365 would govern the organization of the</p>

record, whether in electronic or paper format, including the index and appendix of excerpts. The advisory committee is especially interested in comments addressing whether the order of documents should be by specified document type, as in the attached rule, or in chronological order. Whichever method of organization is specified in rule 3.1365(a)(1), the documents may be organized in a different way, on stipulation or by court order. (Rule 3.1365(a)(3).)

Rule 3.1366 would govern lodging and service of the administrative record. It would allow a party to lodge and serve only an electronic version of the record unless a court ordered lodging and service of the record in paper format or a party requested and paid for a paper version of the record.

Rule 3.137 addresses the administrative record in electronic format. Under the proposed rule, the electronic version of the record is required to be created in portable document format (PDF) or other format that is generally available; divided into PDF or other electronic files that identify each part of the record; contained on a CD-ROM, DVD, or other medium that cannot be altered; and capable of full text searching. (Rule 3.136(a).) The proposed rule would permit, but not require, the party preparing the electronic version of the record to include hyperlinks from the record index to the documents to which they refer.

Rule 3.1368 addresses the administrative record in paper format. It would require that both sides of each page be used and the record be bound or contained in three-ring binders.

The committee also seeks comments on the need for rules that would apply to other actions seeking review of final orders in administrative proceedings.

Rules 3.1365, 3.1366, 3.1367, and 3.1368 are attached at pages 3–6.

Attachment

Rules 3.1365, 3.1366, 3.1367, and 3.1368 of the California Rules of Court would be adopted by the Judicial Council, effective January 1, 2010, to read:

1 **Chapter 7. Petitions Under the California Environmental Quality Act**

2
3 **Rule 3.1365. Form and format of administrative record lodged in a CEQA**
4 **proceeding**

5
6 **(a) Organization**

7
8 (1) *Order of documents*

9
10 The administrative record must be organized with the documents in the
11 following order, as applicable:

12
13 (A) The Notice of Determination;

14
15 (B) The resolutions or ordinances adopted by the lead agency
16 approving the project;

17
18 (C) The findings required by Public Resources Code section 21081,
19 including any statement of overriding considerations;

20
21 (D) The final environmental impact report, including the draft
22 environmental impact report or a revision of the draft, all other
23 matters included in the final environmental impact report, and
24 other types of environmental impact documents prepared under the
25 California Environmental Quality Act, such as a negative
26 declaration, mitigated negative declaration, or addenda;

27
28 (E) The initial study;

29
30 (F) Staff reports prepared for the administrative bodies providing
31 subordinate approvals or recommendations to the lead agency, in
32 chronological order;

33
34 (G) Transcripts and minutes of hearings, in chronological order; and

35
36 (H) The remainder of the administrative record, in chronological order.

37
38 (2) *List not limiting*

39

1 The list of documents in (1) is not intended to limit the content of the
2 administrative record, which is prescribed in Public Resources Code
3 section 21167.6(e).

4
5 (3) *Different order permissible*

6
7 The parties may stipulate, a party may seek a court order, or the court
8 may order that the documents be organized in a different order than set
9 out in (1).

10
11 (4) *Oversized documents*

12
13 Oversized documents included in the record must be presented in a
14 manner that allows them to be easily unfolded and viewed.

15
16 (5) *Use of tabs or electronic bookmarks*

17
18 The administrative record must be separated by tabs or marked with
19 electronic bookmarks that identify each part of the record listed above
20 and any other included documents.

21
22 **(b) Index**

23
24 A detailed index must be placed at the beginning of the administrative record. The
25 index must list each document in the administrative record, in the order presented
26 or in chronological order if ordered by the court, including title, date of the
27 document, brief description, and the volume and page where it begins. The index
28 must list any included exhibits or appendices and must list each document
29 contained in the exhibit or appendix (including environmental impact report
30 appendices) and the volume and page where each document begins. A copy of the
31 index must be filed in the court at the time the administrative record is lodged with
32 the court.

33
34 **(c) Appendix of excerpts**

35
36 A court may require each party filing a brief to prepare and lodge an appendix of
37 excerpts that contains the documents or pages of the record cited in that party's
38 brief.

1 **Rule 3.1366. Lodging and service**

2
3 The party preparing the administrative record must lodge it with the court and
4 serve all parties. A record in electronic format must comply with rule 3.1367. A
5 record in paper format must comply with rule 3.1368. If the party preparing the
6 administrative record elects or is ordered to prepare an electronic version of the
7 record (1) a court may require the party to lodge one copy of the record in paper
8 format, and (2) a party may request the record in paper format and pay the
9 reasonable cost or show good cause for a court order requiring the party preparing
10 the administrative record to serve the requesting party with one copy of the record
11 in paper format.

12
13
14 **Rule 3.1367. Electronic format**

15
16 **(a) Requirements**

17
18 The electronic version of the administrative record lodged in the superior court in
19 a proceeding brought under the California Environmental Quality Act must be:

- 20
21 (1) In compliance with rule 3.1365;
22
23 (2) Created in portable document format (PDF) or other format for which
24 the software for creating and reading documents is in the public domain
25 or generally available at a reasonable cost;
26
27 (3) Divided into a series of electronic files and include electronic
28 bookmarks that identify each part of the record and clearly state the
29 volume and page numbers contained in each part of the record;
30
31 (4) Contained on a CD-ROM, DVD, or other medium that cannot be
32 altered; and
33
34 (5) Capable of full text searching.

35
36 The electronic version of the index required under rule 3.1365(b) may include
37 hyperlinks to the indexed documents.

38
39 **(b) Documents not included**

40
41 Any document that is part of the administrative record and for which it is not
42 feasible to create an electronic version may be provided in paper format only. Not

1 feasible means that it would be reduced in size or otherwise altered to such an
2 extent that it would not be easily readable.

3
4
5 **Rule 3.1368. Paper format**

6
7 **(a) Requirements**

8
9 In the paper format of the administrative record lodged in the superior court in a
10 proceeding brought under the California Environmental Quality Act:

- 11
12 (1) The paper must be recycled;
13
14 (2) Both sides of each page must be used;
15
16 (3) The paper must be opaque, unglazed, white or unbleached, 8 ½ by 11
17 inches, and of standard quality no less than 20-pound weight, except that
18 maps, charts, and other demonstrative materials may be larger; and
19
20 (4) Each page must be numbered consecutively at the bottom.

21
22 **(b) Binding and cover**

23
24 The paper format of the administrative record must be bound on the left margin or
25 contained in three-ring binders. Bound volumes must contain no more than 300
26 pages, and binders must contain no more than 400 pages. If bound, each page must
27 have an adequate margin to allow unimpaired readability. The cover of each
28 volume must contain the information required in Rule 2.111, be prominently
29 entitled “ADMINISTRATIVE RECORD,” and state the volume number and the
30 page numbers included in the volume.

31
32
33 **Chapter 7 8. Other Civil Petitions**

Item SPR09-16 Response Form

Title: **Administrative Record in CEQA Actions** (adopt Cal. Rules of Court, rules 3.1365, 3.1366, 3.1367, and 3.1368)

- Agree with proposed changes
- Agree with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: _____

Name: _____ **Title:** _____

Organization: _____

- Commenting on behalf of an organization

Address: _____

City, State, Zip: _____

To Submit Comments

Comments may be submitted online, written on this form, or prepared in a letter format. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments. You are welcome to email your comments as an attachment.

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DEADLINE FOR COMMENT: 5:00 p.m., Wednesday, June 17, 2009
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Circulation for comment does not imply endorsement by the Judicial Council or the Rules and Projects Committee. All comments will become part of the public record of the council's action.