INITIAL STATEMENT OF REASONS

Section 11343.4 of the Government Code provides the general rule that a regulation or order of repeal required to be filed with the Secretary of State shall become effective on the 30th day after filing. Section 11343.4 goes on to describe specific exceptions to the general rule when (a) the effective date is otherwise specifically provided by statute, (b) a later date is prescribed by the adopting agency, or (c) the adopting agency makes a written request demonstrating good cause for an earlier effective date (in which case the Office of Administrative Law (OAL) may prescribe an earlier date).

In 2012, the Legislature passed and the Governor signed Senate Bill No. 1099 (Wright) (ch. 295, Stats. 2012), a bill that, among other things, amended section 11343.4 of the Government Code. Effective January 1, 2013, Senate Bill No. 1099 (SB 1099) will change the general rule as to the effective date of regulations from the 30th day after filing with the Secretary of State to a more delayed quarterly basis as follows:

1. January 1 if the regulation or order of repeal is filed on September 1 to November 30, inclusive.
2. April 1 if the regulation or order of repeal is filed on December 1 to February 29, inclusive.
3. July 1 if the regulation or order of repeal is filed on March 1 to May 31, inclusive.
4. October 1 if the regulation or order of repeal is filed on June 1 to August 31, inclusive.

As a result of this longer delay in the effective date of regulations, it is possible that OAL will see an increase in written requests from state agencies intending to demonstrate "good cause" for an earlier effective date pursuant to subdivision (c) of Government Code section 11343.4 (subd. (b)(3) after January 1, 2013). The problem is that the term "good cause" is not defined in Government Code section 11343.4, nor does Government Code section 11343.4 specify what factors OAL should consider in determining whether to prescribe an earlier effective date when a written demonstration of "good cause" pursuant to Government Code section 11343.4(c) is provided. The purpose of proposed section 30 of title 1 of the California Code of Regulations is to specify factors consistent with the intent SB 1099 that OAL will consider in determining whether "good cause" has been demonstrated to justify an earlier effective date than the quarterly dates specified in subdivision (a) of Government Code section 11343.4. This will give submitting
agencies notice of what to include in their demonstration of “good cause” for an earlier effective date and provide OAL with appropriate standards so that an earlier effective date is allowed only when a demonstration of “good cause” justifies an earlier effective date than the quarterly dates specified in subdivision (a) of Government Code section 11343.4 as intended by SB 1099.

Proposed section 30 of title 1 of the California Code of Regulations would specify the factors that OAL will consider in determining whether to prescribe an earlier effective date when a written demonstration of “good cause” pursuant to Government Code section 11343.4(c) is provided. Subdivision (a) of proposed section 30 provides that OAL will consider whether businesses, including small businesses, affected by the proposed regulatory action will become aware of any regulatory changes that affect them before the changes go into effect and whether affected businesses, including small businesses, will have adequate time to comply with any new requirements imposed by the proposed regulatory action before the new requirements go into effect. The purpose of subdivision (a) of proposed section 30 is to insure that OAL consider the effect on businesses, including small businesses, from an early effective date for a proposed regulation for which a demonstration of “good cause” is submitted.

The Senate Floor Bill Analysis for SB 1099 (August 28, 2012) provides in part:

The author’s office states that every year, businesses face a barrage of new regulations promulgated by state agencies. The regulations go into effect 30 days after filing with the Secretary of State, and this happens year round. It is difficult, if not impossible, for a small business with minimal staff to keep track of the regulatory process involving multiple departments and agencies. Often this has the effect of guaranteeing that many businesses will be out of compliance with some of the new rules. The author’s office states further that this bill will go a long way toward providing certainty to California’s businesses by allowing them to predict and prepare for new operating rules mandated by state departments.

Subdivision (a) of proposed section 30 requires that OAL consider whether businesses, including small businesses, affected by the proposed regulatory action will become aware of any regulatory changes that affect them before the changes go into effect and whether affected businesses, including small businesses, will have adequate time to comply with any new requirements imposed by the proposed regulatory action before the new requirements go into effect. This will help insure that OAL consider whether the earlier effective date would result in businesses not
having adequate advance notice of new regulations and requirements being imposed. This is consistent with the stated intent of SB 1099 to avoid businesses not being aware of new regulations and for that reason becoming out of compliance with new requirements. This is a benefit to businesses, including small businesses, affected by new regulations.

Subdivision (b) of proposed section 30 provides that OAL will consider whether the benefit to the people of the State of California outweighs any negative effect on affected businesses, including small businesses, imposed by the earlier effective date when a written demonstration of “good cause” pursuant to Government Code section 11343.4(c) is provided. If OAL were to consider only the effect on affected businesses from the imposition of an earlier effective date, urgent regulatory changes necessary for the people of the State of California may be delayed without adequate reason. This would not be consistent with the stated intent of SB 1099.

The Senate Floor Bill Analysis for SB 1099 (August 28, 2012) provides in part:

The supporters state that passage of this bill will alleviate pressure of regulations being enacted at differing times and will lead to better compliance. It will save the state money in enforcement efforts and provide some measure of protection for California’s job creators in a time of economic uncertainty, without interfering with an agency’s ability to react quickly when there is an urgent need, such as it the case when public safety in threatened. (Emphasis added.)

The purpose of subdivision (b) of proposed section 30 is to insure that OAL consider the benefit to the people of the State of California from an earlier effective date for a proposed regulation for which a demonstration of “good cause” is submitted. Considering whether the benefit to the people of the State of California from an earlier effective date outweighs any negative effect on affected businesses, including small businesses, imposed by an earlier effective date is consistent with the stated intent of SB 1099. Subdivision (b) of proposed section 30 will help insure that the adopting state agency retains the ability to act quickly when necessary to take swift action for the benefit of the people of the State of California. This is a real benefit to the people of the State of California particularly when the protection of public health and safety, worker safety, or the environment is involved.

However, businesses are not the only entities affected by new state regulations.
Individuals can also be affected by state regulations. Subdivision (c) of proposed section 30 provides that OAL will consider whether individuals affected by the proposed regulatory action will become aware of any regulatory changes that affect them before the changes go into effect and whether affected individuals will have adequate time to comply with any new requirements imposed by the proposed regulatory action before the new requirements go into effect. The purpose of subdivision (c) of proposed section 30 is to insure that OAL consider the effect on individuals from an early effective date for a proposed regulation for which a demonstration of “good cause” is submitted. Subdivision (c) of proposed section 30 will help insure that individuals not find themselves unaware of new regulations and without adequate time to comply with new requirements. This is a benefit to those individuals affected by new regulations.

Subdivision (d) of proposed section 30 provides that OAL will consider whether the benefit to the people of the State of California outweighs any negative effect on individuals imposed by the earlier effective date when a written demonstration of “good cause” pursuant to Government Code section 11343.4(c) is provided. If OAL were to consider only the effect on affected individuals from the imposition of an earlier effective date, urgent regulatory changes necessary for the people of the State of California may be delayed without adequate justification. Subdivision (d) of proposed section 30 will help insure that the adopting agency has the ability to act quickly for the greater good when there is an urgent need. This is a real benefit to the people of the State of California particularly when the protection of public health and safety, worker safety, or the environment is involved.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS.

OAL relied on a Senate Floor Bill Analysis of SB 1099, dated August 28, 2012.

ECONOMIC IMPACT ASSESSMENT/ANALYSIS

Proposed section 30 of title 1 of the California Code of Regulations would specify the factors that OAL will consider in determining whether to prescribe an earlier effective date when a written demonstration of “good cause” pursuant to Government Code section 11343.4(c) is provided. Subdivision (a) of proposed section 30 provides that OAL will consider whether businesses, including small businesses, affected by the proposed regulatory action will become aware of any regulatory changes that affect them before the changes go into effect and whether
affected businesses, including small businesses, will have adequate time to comply with any new requirements imposed by the proposed regulatory action before the new requirements go into effect. Subdivision (b) of proposed section 30 provides that OAL will consider whether the benefit to the people of the State of California outweighs any negative effect on affected businesses, including small businesses, imposed by the earlier effective date when a written demonstration of "good cause" pursuant to Government Code section 11343.4(c) is provided. Proposed section 30 of title 1 of the California Code of Regulations is consistent with the intent of SB 1099 and OAL does not have any information that proposed section 30 would have any measurable effect on businesses in California outside of that imposed directly by SB 1099. The effect on businesses within the State of California and benefits of SB 1099 are stated as follows:

...The author’s office states further that this bill will go a long way toward providing certainty to California’s businesses by allowing them to predict and prepare for new operating rules mandated by state departments.

The supporters state that passage of this bill will alleviate pressure of regulations being enacted at differing times and will lead to better compliance. It will save the state money in enforcement efforts and provide some measure of protection for California’s job creators in a time of economic uncertainty, without interfering with an agency’s ability to react quickly when there is an urgent need, such as the case when public safety in threatened. (Senate Floor Bill Analysis for SB 1099, August 28, 2012)

As such, any anticipated impact from SB 1099 on the (1) creation or elimination of jobs within the State of California, (2) creation of new businesses or the elimination of existing businesses within the State of California, or (3) expansion of businesses currently doing business within the State of California would necessarily be beneficial, albeit difficult to quantify at this time. Proposed section 30 of title 1 of the California Code of Regulations simply specifies factors consistent with the intent of SB 1099 that OAL will consider in determining whether to allow an earlier effective date for new regulatory actions. These factors are intended to insure businesses, including small businesses, have adequate advance notice of new regulations and requirements before they go into effect except when outweighed by the need of the people of the State of California for more urgent action. However, OAL does not have any information indicating that proposed section 30 of title 1 of the California Code of Regulations will in and of itself have any effect on the (1) creation or elimination of jobs within the State of California, (2) creation of new businesses or the elimination of existing businesses
within the State of California, or (3) expansion of businesses currently doing business within the State of California outside of that already accomplished by SB 1099. Although businesses in California should benefit from OAL considering whether they will become aware of regulatory changes and new requirements before they go into effect when evaluating a request for an earlier effective date, OAL does not have any information indicating that the adoption of section 30 would actually have a positive effect on the creation of jobs and new businesses within the State of California and the expansion of businesses currently doing business within the State of California. Consideration by OAL as to whether the benefit to the people of the State of California outweighs any negative effect on affected businesses from an earlier effective date when evaluating a request for the earlier effective date is not anticipated to eliminate jobs or existing businesses within the State of California. Proposed section 30 of title 1 of the California Code of Regulations will benefit the health and welfare of California residents, worker safety, and the environment in those instances when an urgent need in these areas is demonstrated for an earlier effective date for a new regulation which outweighs any negative effect on businesses, including small businesses, imposed by the earlier effective date.

Although proposed section 30 of title 1 of the California Code of Regulations will directly affect businesses statewide, including small businesses, OAL concludes that the economic impact, including the ability of California businesses to compete with businesses in other states, from section 30 in and of itself will not be significant.

**EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS.**

Proposed section 30 of title 1 of the California Code of Regulations would specify the factors that OAL will consider in determining whether to prescribe an earlier effective date when a written demonstration of “good cause” pursuant to Government Code section 11343.4(c) is provided. Subdivision (a) of proposed section 30 provides that OAL will consider whether businesses, including small businesses, affected by the proposed regulatory action will become aware of any regulatory changes that affect them before the changes go into effect and whether affected businesses, including small businesses, will have adequate time to comply with any new requirements imposed by the proposed regulatory action before the new requirements go into effect. This provision should help insure that the proposed regulation will have no significant statewide adverse economic impact directly affecting businesses. See discussion above.
REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES.

OAL considered not adopting a regulation describing the factors it would consider in determining whether a request for an earlier effective date has demonstrated "good cause" as that term is used in subdivision (b)(3) of Government Code section 11343.4.

Analysis: OAL rejected this alternative. Factors considered by OAL in determining whether "good cause" has been demonstrated for an earlier effective than specified in Government Code section 11343.4(a) would remain unspecified. Factors considered by OAL should be consistent with the intent of SB 1099 and should be spelled out in regulation so that the submitting agency, and OAL, will know what factors will be used in determining whether a request for an earlier effective date has demonstrated "good cause" as that term is used in subdivision (b)(3) of Government Code section 11343.4.