CALIFORNIA RULEMAKING LAW

Statutes and Regulations

Governing the California Rulemaking Process

2000

Gray Davis, Governor

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AGENCY RULEMAKING UNDER THE ADMINISTRATIVE PROCEDURE ACT

Title 2 - "Government of the State of California," Division 3 - "Executive Department," Part 1 - "State Departments and Agencies," Chapter 3.5 - "Administrative Regulations and Rulemaking" (*Government Code* Sections 11340-11359)

CHAPTER 3.5 "ADMINISTRATIVE REGULATIONS AND RULEMAKING"

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Section 11340. Legislative Finding and Declaration

The Legislature finds and declares as follows:

(a) The Legislature therefore declares that it is in the public interest to establish an Office of Administrative Law which shall be charged with the orderly review of adopted regulations. It is the intent of the Legislature that the purpose of such review shall be to reduce the number of administrative

(a) There has been an unprecedented growth in th number of administrative regulations in recent years

(b) The language of many regulations is frequentl unclear and unnecessarily complex, even when the complicated and technical nature of the subject matter is taken into account. The language is often confusing to the persons who must comply with the regulations.

(c) Substantial time and public funds have been spent in adopting regulations, the necessity for whic has not been established.

(d) The imposition of prescriptive standards upon private persons and entities through regulations where the establishment of performance standards could reasonably be expected to produce the same result has placed an unnecessary burden on Californ citizens and discouraged innovation, research, and development of improved means of achieving desirable social goals.

(e) There exists no central office in state government with the power and duty to review regulations to ensure that they are written in a comprehensible manner, are authorized by statute ar are consistent with other law.

(f) Correcting the problems that have been causec by the unprecedented growth of regulations in California requires the direct involvement of the Legislature as well as that of the executive branch o state government.

(g) The complexity and lack of clarity in many regulations put small businesses, which do not have the resources to hire experts to assist them, at a distinct disadvantage.

Section 11340.1. Legislative Intent

regulations and to improve the quality of those regulations which are adopted. It is the intent of the Legislature that agencies shall actively seek to reduce the unnecessary regulatory burden on private individuals and entities by substituting performance standards for prescriptive standards wherever performance

standards can be reasonably expected to be as effective and less burdensome, and that this substitution shall be considered during the course of the agency rulemaking process. It is the intent of the Legislature that neither the Office of Administrative Law nor the court should substitute its judgment for that of the rulemaking agency as expressed in the substantive content of adopted regulations. It is the intent of the Legislature that while the Office of Administrative Law will be part of the executive branch of state government, that the office work closely with, and upon request report directly to, the Legislature in order to accomplish regulatory reform in California.

(b) It is the intent of the Legislature that the California Code of Regulations made available on the Internet by the office pursuant to Section 11344 include complete authority and reference citations and history notes.

Section 11340.2. Establishment of Office; Director and Deputy Director

(a) The Office of Administrative Law is hereby established in state government. The office shall be under the direction and control of an executive officer who shall be known as the director. There shall also be a deputy director. The director's term and the deputy director's term of office shall be coterminous with that of the appointing power, except that they shall be subject to reappointment.

(b) The director and deputy director shall have the same qualifications as a hearing officer and shall be appointed by the Governor subject to the confirmation of the Senate.

Law Revision Commission Comment:

Section 11340.4 transfers to the Office of Administrative Law authority formerly found in Section 11370.5 relating to the study of "administrative law" by the Office of Administrative Hearings, to the extent that authority related to administrative rulemaking. (25 Cal.L.Rev. Comm. Reports 55 (1995))

Section 11340.3. Personnel

The director may employ and fix the compensation, in accordance with law, of such professional assistants and clerical and other employees as is deemed necessary for the effective conduct of the work of the office.

Section 11340.4. Office Authorized to Study Administrative Rulemaking

(a) The office is authorized and directed to do the following:

(1) Study the subject of administrative rulemaking in all its aspects.

(2) In the interest of fairness, uniformity, and the expedition of business, submit its suggestions to the various agencies.

(3) Report its recommendations to the Governor and Legislature at the commencement of each general session.

(b) All agencies of the state shall give the office ready access to their records and full information and reasonable assistance in any matter of research requiring recourse to them or to data within their knowledge or control. Nothing in this subdivision authorizes an agency to provide access to records required by statute to be kept confidential.

Section 11340.5. Agency Guidelines, Criteria, Bulletins, Manuals, Instructions, Orders, Standards of General Application

or Other Rules; Adoption as Regulation; Filing; Determination of Status as Regulation

(a) No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in subdivision (g) of Section 11342, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to this chapter.

(b) If the office is notified of, or on its own, learns of the issuance, enforcement of, or use of, an agency guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule that has not been adopted as a regulation and filed with the Secretary of State pursuant to this chapter, the office may issue a determination as to whether the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, is a regulation as defined in subdivision (g) of Section 11342.

(c) The office shall do all of the following:

(1) File its determination upon issuance with the Secretary of State.

(2) Make its determination known to the agency, the Governor, and the Legislature.

(3) Publish its determination in the California Regulatory Notice Register within 15 days of the date of issuance.

Except where the right to petition for adoption of a regulation is restricted by statute to a designated group or where the form of procedure for such a petition is otherwise prescribed by statute, any interested person may petition a state agency requesting the adoption, amendment, or repeal of a regulation as provided in Article 5 (commencing with Section 11346). This petition shall state the following clearly and concisely:

(4) Make its determination available to the public and the courts.

(d) Any interested person may obtain judicial review of a given determination by filing a written petition requesting that the determination of the office be modified or set aside. A petition shall be filed with the court within 30 days of the date the determination is published.

(e) A determination issued by the office pursuant to this section shall not be considered by a court, or by an administrative agency in an adjudicatory proceeding if all of the following occurs:

(1) The court or administrative agency proceeding involves the party that sought the determination from the office.

(2) The proceeding began prior to the party's request for the office's determination.

(3) At issue in the proceeding is the question of whether the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule that is the legal basis for the adjudicatory action is a regulation as defined in subdivision (g) of Section 11342.

Section 11340.6. Petition for Adoption or Repeal; Contents

(a) The substance or nature of the regulation, amendment, or repeal requested.

(b) The reason for the request.

(c) Reference to the authority of the state agency to take the action requested.

Section 11340.7. Petition for Adoption, Amendment or Repeal; Relief; Reconsideration

(a) Upon receipt of a petition requesting the adoption, amendment, or repeal of a regulation pursuant to Article 5 (commencing with Section 11346), a state agency shall notify the petitioner in writing of the receipt and shall within 30 days deny the petition indicating why the agency has reached its decision on the merits of the petition in writing or schedule the matter for public hearing in accordance with the notice and hearing requirements of that article.

(b) A state agency may grant or deny the petition in part, and may grant any other relief or take any other action as it may determine to be warranted by the petition and shall notify the petitioner in writing of this action.

(c) Any interested person may request a reconsideration of any part or all of a decision of any agency on any petition submitted. The request shall be submitted in accordance with Section 11340.6 and include the reason or reasons why an agency should reconsider its previous decision no later than 60 days after the date of the decision involved. The agency's reconsideration of any matter relating to a petition shall be subject to subdivision (a).

(d) Any decision of a state agency denying in whole or in part or granting in whole or in part a petition requesting the adoption, amendment, or repeal of a regulation pursuant to Article 5 (commencing with Section 11346) shall be in writing and shall be transmitted to the Office of Administrative Law for publication in the California Regulatory Notice Register at the earliest practicable date. The decision shall identify the agency, the party submitting the petition, the provisions of the California Code of Regulations requested to be affected, reference to authority to take the action requested, the reasons supporting the agency determination, an agency contact person, and the right of interested persons to obtain a copy of the petition from the agency.

ARTICLE 2. DEFINITIONS; AUTHORITY; VALIDITY; REGULATIONS IMPLEMENTING THE ACT.

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Section 11342. "State Agency," "Agency," "Regulation," "Order of Repeal," "Office," "Small Business" and "Plain English."

In this chapter, unless otherwise specifically indicated, the following definitions apply:

(a) "Agency" and "state agency" do not include an agency in the judicial or legislative departments of the state government.

(b) "Office" means the Office of Administrative Law.

(c) "Order of repeal" means any resolution, order or other official act of a state agency that expressly repeals a regulation in whole or in part.

(d) "Performance standard" means a regulation that describes an objective with the criteria stated for achieving the objective.

(e) "Plain English" means language that can be interpreted by a person who has no more

than an eighth grade level of proficiency in English.

(f) "Prescriptive standard" means a regulation that specifies the sole means of compliance with a performance standard by specific actions, measurements, or other quantifiable means.

(g) "Regulation" means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure, except one that relates only to the internal management of the state agency. "Regulation" does not mean or include legal rulings of counsel issued by the Franchise Tax Board or State Board of Equalization, or any form prescribed by a state agency or any instructions relating to the use of the form, but this provision is not a limitation upon any requirement that a regulation be adopted pursuant to this part when one is needed to implement the law under which the form is issued.

(h)(1) "Small business" means a business activity in agriculture, general construction, special trade construction, retail trade, wholesale trade, services, transportation and warehousing, manufacturing, generation and transmission of electric power, or a health care facility, unless excluded in paragraph (2), that is both of the following:

(i) Agriculture, one million dollars ($1,000,0000).

(ii) General construction, nine million five hundred thousand dollars ($9,500,000).

(iii) Special trade construction, five million dollars ($5,000,000).

(iv) Retail trade, two million dollars ($2,000,000).

(v) Wholesale trade, nine million five hundred thousand dollars ($9,500,000).

(A) Independently owned and operated.

(B) Not dominant in its field of operation.

(2) "Small business" does not include the following professional and business activities:

(A) A financial institution including a bank, a trust, a savings and loan association, a thrift institution, a consumer finance company, a commercial finance company, an industrial finance company, a credit union, a mortgage and investment banker, a securities broker-dealer, or an investment adviser.

(B) An insurance company, either stock or mutual.

(C) A mineral, oil, or gas broker; a subdivider or developer.

(D) A landscape architect, an architect, or a building designer.

(E) An entity organized as a nonprofit institution.

(F) An entertainment activity or production, including a motion picture, a stage performance, a television or radio station, or a production company.

(G) A utility, a water company, or a power transmission company generating and transmitting more than 4.5 million kilowatt hours annually.

(H) A petroleum producer, a natural gas producer, a refiner, or a pipeline.

(I) A business activity exceeding the following annual gross receipts in the categories of:

(vi) Services, two million dollars ($2,000,000).

(vii) Transportation and warehousing, one million five hundred thousand dollars ($1,500,000).

(J) A manufacturing enterprise exceeding 250 employees.

(K) A health care facility exceeding 150 beds or one million five hundred thousand dollars ($1,500,000) in annual gross receipts.

Section 11342.1. Scope of Authority

Except as provided in Section 11342.4, nothing in this chapter confers authority upon or augments the authority of any state agency to adopt, administer, or enforce any regulation. Each regulation adopted, to be effective, shall be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law.

Section 11342.2. Validity of Regulations

Whenever by the express or implied terms of any statute a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, no regulation adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute.

Section 11342.4. Regulations to Carry Out Provisions of Chapter

The office shall adopt, amend, or repeal regulations for the purpose of carrying out the provisions of this chapter.

ARTICLE 3. FILING AND PUBLICATION

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Section 11343. Transmittal of Certified Copies of Regulations Adopted and Orders of Repeal; Delivery of Notice of Proposed Action

Every state agency shall:

(a) Transmit to the office for filing with the Secretary of State a certified copy of every regulation adopted or amended by it except one which:

(1) Establishes or fixes rates, prices, or tariffs.

(2) Relates to the use of public works, including streets and highways, when the effect of the regulation is indicated to the public by means of signs or signals or when the order determines uniform standards and specifications for official traffic control devices pursuant to Section 21400 of the Vehicle Code.

(3) Is directed to a specifically named person or to a group of persons and does not apply generally throughout the state.

(4) Is a building standard, as defined in Section 18909 of the Health and Safety Code.

(b) Transmit to the office for filing with the Secretary of State a certified copy of every order of repeal of a regulation required to be filed under subdivision (a).

(c) Deliver to the office, at the time of transmittal for filing a regulation or order of repeal six duplicate copies of the regulation or order of repeal, together with a citation of the authority pursuant to which it or any part thereof was adopted.

(d) Deliver to the office a copy of the notice of proposed action required by Section 11346.4.

(e) Transmit to the State Building Standards Commission for approval a certified copy of every regulation, or order of repeal of a regulation, that is a building standard or administrative regulation that applies directly to the implementation or enforcement of building standards, together with a citation of authority pursuant to which it or any part thereof was adopted, a copy of the notice of proposed action required by Section 11346.4, and any other records prescribed by the State Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code).

No fee shall be charged by any state officer or public official for the performance of any official act in connection with the certification or filing of regulations pursuant to this article.

Section 11343.4. Effective Date of Regulation or Repeal

A regulation or an order of repeal required to be filed with the Secretary of State shall

(f) Whenever a certification is required by this section, it shall be made by the head of the state agency or his or her designee which is adopting, amending, or repealing the regulation and the certification and delegation shall be in writing.

Section 11343.1. Style; Endorsement

(a) All regulations transmitted to the Office of Administrative Law for filing with the Secretary of State shall conform to the style prescribed by the office.

(b) Regulations approved by the office shall bear an endorsement by the office affixed to the certified copy which is filed with the Secretary of State.

Section 11343.2. Endorsement of Time and Date of Filing; Public Inspection; Fees; Prohibition

The Secretary of State shall endorse on the certified copy of each regulation or order of repeal filed with or delivered to him or her, the time and date of filing and shall maintain a permanent file of the certified copies of regulations and orders of repeal for public inspection.

become effective on the 30th day after the date of filing unless:

(a) Otherwise specifically provided by the statute pursuant to which the regulation or order of repeal was adopted, in which event it becomes effective on the day prescribed by this statute.

(b) It is a regulation adopted under Section 8054 or 3373 of the Financial Code, in which event it shall become effective upon filing or upon any later date specified by the state

agency in a written instrument filed with, or as part of, the regulation or order of repeal.

(c) A later date is prescribed by the state agency in a written instrument filed with, or as part of, the regulation or order of repeal.

(d) The agency makes a written request to the office demonstrating good cause for an earlier effective date, in which case the office may prescribe an earlier date.

Section 11343.5. Filing Copy of California Code of Regulations or California Regulatory Code Supplement in Office of County Clerk or Delegated Person

Within 10 days from the receipt of printed copies of the California Code of Regulations or other California Regulatory Code Supplement from the State Printing Office, the office shall file one copy of the particular issue of the code or supplement in the office of the county clerk of each county in this state, or if the authority to accept filings on his or her behalf has been delegated by the county clerk of any county pursuant to Section 26803.5, in the office of the person to whom that authority has been delegated.

Section 11343.6. Rebuttable Presumptions; Judicial Notice

The filing of a certified copy of a regulation or an order of repeal with the Secretary of State raises the rebuttable presumptions that:

(a) It was duly adopted.

(b) It was duly filed and made available for public inspection at the day and hour endorsed on it.

(c) All requirements of this chapter and the regulations of the office relative to such regulation have been complied with.

(d) The text of the certified copy of a regulation or order of repeal is the text of the regulation or order of repeal as adopted.

The courts shall take judicial notice of the contents of the certified copy of each regulation and of each order of repeal duly filed.

Section 11343.8. Filing and Publication Other Than Required by Article

Upon the request of a state agency, the office may file with the Secretary of State and the office may publish in such manner as it believes proper, any regulation or order of repeal of a regulation not required by this article to be filed with the Secretary of State.

ARTICLE 4. THE CALIFORNIA CODE OF REGULATIONS AND CALIFORNIA REGULATORY NOTICE REGISTER

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Section 11344. California Code of Regulations and California Regulatory Code Supplement; Publication; Updating

The office shall do all of the following:

(a) Provide for the official compilation, printing, and publication of adoption, amendment, or repeal of regulations, which shall be known as the California Code of Regulations. On and after July 1, 1998, the office shall make available on the Internet, free of charge, the full text of the California Code of Regulations, and may contract with another state agency or a private entity in order to provide this service.

(b) Provide for the compilation, printing, and publication of weekly updates of the California Code of Regulations. This publication shall be known as the California

(3) All regulation decisions issued in the previous week detailing the reasons for disapproval of a regulation, the reasons for not filing an emergency regulation, and the reasons for repealing an emergency regulation. The California Regulatory Notice Register shall also include a quarterly index of regulation decisions.

(4) The Governor's action in reviewing the disapprovals of the office, the decisions to repeal, the agency's request for review, the office's response thereto, and the decisions of Regulatory Code Supplement and shall contain amendments to the code.

(c) Provide for the publication dates and manner and form in which regulations shall be printed and distributed and ensure that regulations are available in printed form at the earliest practicable date after filing with the Secretary of State.

(d) Ensure that each regulation is printed together with a reference to the statutory authority pursuant to which it was enacted and the specific statute or other provision of law which the regulation is implementing, interpreting, or making specific.

Section 11344.1. California Regulatory Notice Register; Publication

The office shall do all of the following:

(a) Provide for the publication of the California Regulatory Notice Register, which shall be an official publication of the State of California and which shall contain the following:

(1) Notices of proposed action prepared by regulatory agencies, subject to the notice requirements of this chapter, and which have been approved by the office.

(2) A summary of all regulations filed with the Secretary of State in the previous week. the Governor's office, as required by Section 11349.7.

(5) Determinations issued pursuant to Section 11340.5.

(b) Establish the publication dates and manner and form in which the California Regulatory Notice Register shall be prepared and published and ensure that it is published and distributed in a timely manner to the presiding officer and rules committee of each house of the Legislature and to all subscribers.

Section 11344.2. Supplying Sets to County Clerks or Delegated Persons

The office shall supply a complete set of the California Code of Regulations, and of the California Regulatory Code Supplement in the form provided by the State Printer to the county clerk of any county or to the delegatee of the county clerk pursuant to Section 26803.5, provided the director makes the following two determinations:

(a) The county clerk or the delegatee of the county clerk pursuant to Section 26803.5 is maintaining the code and supplement in complete and current condition in a place and at times convenient to the public.

(b) The California Code of Regulations and California Regulatory Code Supplement are not otherwise reasonably available to the public in the community where the county clerk or the delegatee of the county clerk pursuant to Section 26803.5 would normally maintain the code and supplements by distribution to libraries pursuant to Article 6 (commencing with Section 14900) of Chapter 7 of Part 5.5.

Section 11344.3. Document Published in California Regulatory Notice Register

Every document, other than a notice of proposed rulemaking action, required to be published in the California Regulatory Notice Register by this chapter, shall be published in the first edition of the California Regulatory Notice Register following the date of the document.

Section 11344.4. Sale; Prices; Disposition of Proceeds

(a) The California Code of Regulations, the California Regulatory Code Supplement, and the California Regulatory Notice Register shall be sold at prices which will reimburse the state for all costs incurred for printing, publication, and distribution.

(b) All money received by the state from the sale of the publications listed in subdivision (a) shall be deposited in the treasury and credited to the General Fund, except that, where applicable, an amount necessary to cover the printing, publication, and distribution costs shall be credited to the fund from which the costs have been paid.

Section 11344.6. Presumption from Publication in Code or Supplement; Judicial Notice of Contents of Regulation or Repeal

The publication of a regulation in the California Code of Regulations or California Regulatory Code Supplement raises a rebuttable presumption that the text of the regulation as so published is the text of the regulation adopted.

The courts shall take judicial notice of the contents of each regulation which is printed or which is incorporated by appropriate reference into the California Code of Regulations as compiled by the office.

The courts shall also take judicial notice of the repeal of a regulation as published in the California Regulatory Code Supplement compiled by the office.

Section 11344.7. Purchase by State Agencies; Special Editions

Nothing in this chapter precludes any person or state agency from purchasing copies

of the California Code of Regulations, the California Regulatory Code Supplement, or the California Regulatory Notice Register or of any unit of either, nor from printing special editions of any such units and distributing the same. However, where the purchase and printing is by a state agency, the state agency shall do so at the cost or at less than the cost to the agency if it is authorized to do so by other provisions of law.

Section 11344.9. California Administrative Code, California Administrative Code Supplement, California Administrative Notice Register

(a) Whenever the term "California Administrative Code" appears in law, official legal paper, or legal publication, it means the "California Code of Regulations."

(b) Whenever the term "California Administrative Notice Register" appears in any law, official legal paper, or legal publication, it means the "California Regulatory Notice Register."

(c) Whenever the term "California Administrative Code Supplement" appears in any law, official legal paper, or legal publication, it means the "California Regulatory Code Supplement."

ARTICLE 5. PUBLIC PARTICIPATION: PROCEDURE FOR ADOPTION OF REGULATIONS

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Section 11346. Purpose; Application; Construction

It is the purpose of this chapter to establish basic minimum procedural requirements for the adoption, amendment or repeal of administrative regulations. Except as provided in Section 11346.1, the provisions of this chapter are applicable to the exercise of any quasi-legislative power conferred by any statute heretofore or hereafter enacted, but nothing in this chapter repeals or diminishes additional requirements imposed by any statute. This chapter shall not be superseded or modified by any subsequent legislation except to the extent that the legislation shall do so expressly.

Section 11346.1. Application of Article and Certain Sections; Emergency Regulations or Repeals; Building Standards

(a) This article does not apply to any regulation not required to be filed with the Secretary of State under this chapter, and only this section and Sections 11343.4 and 11349.6 apply to an emergency regulation adopted pursuant to subdivision (b), or to any regulation adopted under Section 8054 or 3373 of the Financial Code.

(b) Except as provided in subdivision (c), if a state agency makes a finding that the adoption of a regulation or order of repeal is necessary for the immediate preservation of the public peace, health and safety or general welfare, the regulation or order of repeal may be adopted as an emergency regulation or order of repeal.

Any finding of an emergency shall include a written statement which contains the information required by paragraphs (2) to (6), inclusive, of subdivision (a) of Section 11346.5 and a description of the specific facts showing the need for immediate action. The enactment of an urgency statute shall not, in and of itself, constitute a need for immediate action.

The statement and the regulation or order of repeal shall be filed immediately with the office.

(c) Notwithstanding any other provision of law, no emergency regulation that is a building standard, as defined in Section 18909 of the Health and Safety Code, shall be filed, nor shall the building standard be effective, unless the building standards are submitted to the State Building Standards Commission, and are approved and filed pursuant to Sections 18937 and 18938 of the Health and Safety Code.

(d) The emergency regulation or order of repeal shall become effective upon filing or upon any later date specified by the state agency in a written instrument filed with, or as a part of, the regulation or order of repeal.

(e) No regulation, amendment, or order of repeal adopted as an emergency regulatory action shall remain in effect more than 120 days unless the adopting agency has complied with Sections 11346.2 to 11346.9, inclusive, prior to the adoption of the emergency regulatory action, or has, within the 120-day period, completed the regulation adoption process by formally adopting the emergency regulation, amendment, or order of repeal or any amendments thereto, pursuant to this

chapter. The adopting agency, prior to the expiration of the 120-day period, shall transmit to the office for filing with the Secretary of State the adopted regulation, amendment, or order of repeal, the rulemaking file, and a certification that either Sections 11346.2 to 11346.9, inclusive, were complied with prior to the emergency regulatory action, or that there was compliance with this section within the 120-day period.

(f) In the event an emergency amendment or order of repeal is filed and the adopting agency fails to comply with subdivision (e), the regulation as it existed prior to the emergency amendment or order of repeal shall thereupon become effective and after notice to the adopting agency by the office shall be reprinted in the California Code of Regulations.

(g) In the event a regulation is originally adopted and filed as an emergency and the adopting agency fails to comply with subdivision (e), this failure shall constitute a repeal thereof and after notice to the adopting agency by the office, shall be deleted.

(h) A regulation originally adopted as an emergency regulation, or an emergency regulation substantially equivalent thereto that is readopted as an emergency regulation, shall not be filed with the Secretary of State as an emergency regulation except with the express prior approval of the director of the office.

Section 11346.2. Express Terms of Proposed Action; Drafting Regulations in Plain English; Noncontrolling Plain English summary; Authority and Reference; Underline and Strikeout; Initial Statement of Reasons; Department, Board, Commission within California Environmental Protection Agency, Resources Agency, or State Fire Marshal; State agency adopting or amending regulations mandated by federal law or regulations

Every agency subject to this chapter shall prepare, submit to the office with the notice of the proposed action as described in Section 11346.5, and make available to the public upon request, all of the following:

(a) A copy of the express terms of the proposed regulation.

(1) The agency shall draft the regulation in plain, straightforward language, avoiding technical terms as much as possible, and using a coherent and easily readable style. If the regulation affects small business, the agency shall draft the regulation in plain English, as defined in subdivision (e) of Section 11342. However, if it is not feasible to draft the regulation in plain English due to the technical nature of the regulation, the agency shall prepare a noncontrolling plain English summary of the regulation.

(2) The agency shall include a notation following the express terms of each regulation listing the specific statutes or other provisions of law authorizing the adoption of the regulation and listing the specific statutes or other provisions of law being implemented, interpreted, or made specific by the regulation.

(3) The agency shall use underline or italics to indicate additions to, and strikeout to indicate deletions from, the California Code of Regulations.

(b) An initial statement of reasons for proposing the adoption, amendment, or repeal of a regulation. This statement of reasons shall include, but not be limited to, all of the following:

(1) A description of the public problem, administrative requirement, or other condition or circumstance that each adoption, amendment, or repeal is intended to address.

(2) A statement of the specific purpose of each adoption, amendment, or repeal and the rationale for the determination by the agency that each adoption, amendment, or repeal is reasonably necessary to carry out the purpose for which it is proposed. Where the adoption or amendment of a regulation would mandate the use of specific technologies or equipment, a statement of the reasons why the agency believes these mandates or prescriptive standards are required.

(3) An identification of each technical, theoretical, and empirical study, report, or similar document, if any, upon which the agency relies in proposing the adoption, amendment, or repeal of a regulation.

(4) (A) A description of the alternatives to the regulation considered by the agency and the agency's reasons for rejecting those alternatives. In the case of a regulation that would mandate the use of specific technologies or equipment or prescribe specific actions or procedures, the imposition of performance standards shall be considered as an alternative.

(B) A description of any alternatives the agency has identified that would lessen any adverse impact on small business. It is not the intent of this paragraph to require the agency to artificially construct alternatives or to justify why it has not identified alternatives.

(5) Facts, evidence, documents, testimony, or other evidence upon which the agency relies to support a finding that the action will not have a significant adverse economic impact on business.

(6) A department, board, or commission within the Environmental Protection Agency, the Resources Agency, or the Office of the State Fire Marshal shall describe its efforts, in connection with a proposed rulemaking action, to avoid unnecessary duplication or conflicts with federal regulations contained in the Code of Federal Regulations addressing the same issues. These agencies may adopt regulations different from federal regulations contained in the Code of Federal Regulations addressing the same issues upon a finding of one or more of the following justifications:

(A) The differing state regulations are authorized by law.

(B) The cost of differing state regulations is justified by the benefit to human health, public safety, public welfare, or the environment.

(c) A state agency that adopts or amends a regulation mandated by federal law or regulations, the provisions of which are identical to a previously adopted or amended federal regulation, shall be deemed to have complied with subdivision (b) if a statement to the effect that a federally mandated regulation or amendment to a regulation is being proposed, together with a citation to where an explanation of the provisions of the regulation can be found, is included in the notice of proposed adoption or amendment prepared pursuant to Section 11346.5. However, the agency shall comply fully with this chapter with respect to any provisions in the regulation that the agency proposes to adopt or amend that are different from the corresponding provisions of the federal regulation.

Section 11346.3. Assessing Potential for Significant Adverse Economic Impact on Business or individuals; Ability of California businesses to compete; Assessing creation or elimination of jobs and businesses; Exempting from reporting

(a) State agencies proposing to adopt or amend any administrative regulation shall assess the potential for adverse economic impact on California business enterprises and individuals, avoiding the imposition of unnecessary or unreasonable regulations or

reporting, recordkeeping, or compliance requirements. For purposes of this subdivision assessing the potential for adverse economic impact shall require agencies, when adopting new regulations or reviewing or amending existing regulations, to adhere to the following requirements, to the extent that these requirements do not conflict with other state or federal laws:

(1) The regulations shall be based on adequate information concerning the need for, and consequences of, proposed governmental action.

(2) The state agency, prior to submitting regulations to the office, shall consider the impact on business when initiating, processing, and adopting regulations with consideration of industries affected including the ability of California businesses to compete with businesses in other states. For purposes of evaluating the impact on the ability of California businesses to compete with businesses in other states, an agency shall consider, but not be limited to, information supplied by interested parties.

It is not the intent of this section to impose additional criteria on agencies, above that which exists in current law, in assessing adverse economic impact on California

(c) No administrative regulation adopted on or after January 1, 1993, that requires a report shall apply to businesses, unless the state agency adopting the regulation makes a finding that it is necessary for the health, safety, or welfare of the people of the state that the regulation apply to businesses.

Section 11346.4. Notice of Proposed Action; Mailing; Delivery; Publication; Effective Period; Notice of Adoption, Amendment or Repeal after Completion and Approval; Grounds to refuse

business enterprises, but only to assure that the assessment is made early in the process of initiation and development of proposed regulations or amendments to regulations.

(b)(1) All state agencies proposing to adopt or amend any administrative regulations shall assess whether and to what extent it will affect the following:

(A) The creation or elimination of jobs within the State of California.

(B) The creation of new businesses or the elimination of existing businesses within the State of California.

(C) The expansion of businesses currently doing business within the State of California.

(2) For purposes of this subdivision, "state agency" shall include every state office, officer, department, division, bureau, board, and commission, whether created by the Constitution, statute, or initiative, but shall not include the courts, an agency in the judicial or legislative branch of state government, the University of California, the Hastings College of the Law, or the Fair Political Practices Commission.

(3) Information required from state agencies for the purpose of completing the assessment may come from existing state publications.

publication; California Regulatory Notice Register

(a) At least 45 days prior to the hearing and close of the public comment period on the adoption, amendment, or repeal of a regulation, notice of the proposed action shall be:

(1) Mailed to every person who has filed a request for notice of regulatory actions with the state agency.

(2) In cases in which the state agency is within a state department, mailed or delivered to the director of the department.

(3) Mailed to a representative number of small business enterprises or their representatives which have been identified as being affected by the proposed action.

(4) When appropriate in the judgment of the state agency, mailed to any person or group of persons whom the agency believes to be interested in the proposed action and published in the form and manner as the state agency shall prescribe.

(5) Published in the California Regulatory Notice Register as prepared by the office for each state agency's notice of regulatory action.

(b) The effective period of a notice issued pursuant to this section shall not exceed one year from the date thereof. If the adoption, amendment, or repeal of a regulation proposed in the notice is not completed and transmitted to the office within the period of one year, a notice of the proposed action shall again be issued pursuant to this article.

(c) Once the adoption, amendment, or repeal is completed and approved by the office, no further adoption, amendment, or repeal to the noticed regulation shall be made without subsequent notice being given.

(d) The office may refuse to publish a notice submitted to it if the agency has failed to comply with this article.

(e) The office shall make the California Regulatory Notice Register available to the public and state agencies at a nominal cost that is consistent with a policy of encouraging the widest possible notice distribution to interested persons.

(f) Where the form or manner of notice is prescribed by statute in any particular case, in addition to filing and mailing notice as required by this section, the notice shall be published, posted, mailed, filed, or otherwise publicized as prescribed by that statute. The failure to mail notice to any person as provided in this section shall not invalidate any action taken by a state agency pursuant to this article.

Section 11346.5. Notice of Proposed Adoption, Amendment or Repeal; Contents; Plain English Policy Statement Overview; Availability to Public

(a) The notice of proposed adoption, amendment, or repeal of a regulation shall include the following:

(1) A statement of the time, place, and nature of proceedings for adoption, amendment, or repeal of the regulation.

(2) Reference to the authority under which the regulation is proposed and a reference to the particular code sections or other provisions of law that are being implemented, interpreted, or made specific.

(3) An informative digest containing a concise and clear summary of existing laws and regulations, if any, related directly to the proposed action and the effect of the proposed action. The informative digest shall be drafted in a format similar to the Legislative Counsel's digest on legislative bills.

(A) If the proposed action differs substantially from an existing comparable federal regulation or statute, the informative digest shall also include a brief description of the significant differences and the full citation of the federal regulations or statutes.

(B) If the proposed action affects small business, the informative digest shall also include a plain English policy statement overview explaining the broad objectives of the regulation and, if appropriate, the specific objectives.

(4) Any other matters as are prescribed by statute applicable to the specific state agency or to any specific regulation or class of regulations.

(5) A determination as to whether the regulation imposes a mandate on local agencies or school districts and, if so, whether the mandate requires state reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4.

(6) An estimate, prepared in accordance with instructions adopted by the Department of Finance, of the cost or savings to any state agency, the cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4, other nondiscretionary cost or savings imposed on local agencies, and the cost or savings in federal funding to the state.

For purposes of this paragraph, "cost or savings" means additional costs or savings, both direct and indirect, that a public agency necessarily incurs in reasonable compliance with regulations.

(7) If a state agency, in proposing to adopt or amend any administrative regulation, determines that the action may have a significant adverse economic impact on business, including the ability of California businesses to compete with businesses in other states, it shall include the following information in the notice of proposed action:

(8) If a state agency, in adopting or amending any administrative regulation, determines that the action will not have a significant adverse economic impact on business, including the ability of California businesses to compete with businesses in other states, it shall make a declaration to that effect in the notice of proposed action. In making this determination, the agency shall provide in the record facts, evidence, documents, testimony, or other evidence upon which the agency relies to support that finding.

An agency's determination and declaration that a proposed regulation may have or will not have a significant, adverse impact on businesses, including the ability of California

(A) Identification of the types of businesses that would be affected.

(B) A description of the projected reporting, recordkeeping, and other compliance requirements that would result from the proposed action.

(C) The following statement: "The (name of agency) finds that the (adoption/amendment) of this regulation may have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states. The (name of agency) (has/has not) considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit proposals. Submissions may include the following considerations:

(i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.

(ii) Consolidation or simplification of compliance and reporting requirements for businesses.

(iii) The use of performance standards rather than prescriptive standards.

(iv) Exemption or partial exemption from the regulatory requirements for businesses." businesses to compete with businesses in other states, shall not be grounds for the office to refuse to publish the notice of proposed action.

(9) A statement of the potential cost impact of the proposed action on private persons or businesses directly affected, as considered by the agency during the regulatory development process.

For purposes of this paragraph, "cost impact" means the reasonable range of costs, or a description of the type and extent of costs, direct or indirect, that a representative private person or business necessarily incurs in reasonable compliance with the proposed action.

(10) A statement of the results of the assessment required by subdivision (b) of Section 11346.3.

(11) A statement that the action would have a significant effect on housing costs, if a state agency, in adopting, amending, or repealing any administrative regulation, determines that the action would have an effect. In addition, the agency officer designated in paragraph (13), shall make available to the public, upon request, the agency's evaluation, if any, of the effect of the proposed regulatory action on housing costs.

(12) A statement that the adopting agency must determine that no alternative considered by the agency would 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 than the proposed action.

(13) The name and telephone number of the agency officer to whom inquiries concerning the proposed administrative action may be directed.

(14) The date by which comments submitted in writing must be received to present statements, arguments, or contentions in writing relating to the proposed action in order for them to be considered by the state agency before it adopts, amends, or repeals a regulation.

(15) Reference to the fact that the agency proposing the action has prepared a statement of the reasons for the proposed action, has available all the information upon which its proposal is based, and has available the express terms of the proposed action, pursuant to subdivision (b).

(16) A statement that if a public hearing is not scheduled, any interested person or his or her duly authorized representative may request, no later than 15 days prior to the close of the written comment period, a public hearing pursuant to Section 11346.8.

(17) A statement indicating that the full text of a regulation changed pursuant to Section 11346.8 will be available for at least 15 days prior to the date on which the agency adopts, amends, or repeals the resulting regulation.

(b) The agency officer designated in paragraph (13) of subdivision (a) shall make available to the public upon request the express terms of the proposed action. The officer shall also make available to the public upon request the location of public records, including reports, documentation, and other materials, related to the proposed action.

(c) This section shall not be construed in any manner that results in the invalidation of a regulation because of the alleged inadequacy of the notice content or the summary or cost estimates, or the alleged inadequacy or inaccuracy of the housing cost estimates, if there has been substantial compliance with those requirements.

11346.54. Assessment of effect of regulations upon jobs and business expansion, elimination or creation

(a) All state agencies proposing to adopt or amend any administrative regulation shall assess whether and to what extent it will affect the following:

(1) The creation or elimination of jobs within the State of California.

(2) The creation of new businesses or the elimination of existing businesses within the State of California.

(3) The expansion of businesses currently doing business within the State of California.

(b) For purposes of this section, “state agency” shall include every state office, officer, department, division, bureau, board, and commission, whether created by the Constitution, statute, or initiative, but shall not include the courts, an agency in the judicial

or legislative branch of state government, the University of California, the Hastings College of the Law, or the Fair Political Practices Commission.

(c) The state agency shall include a statement of the results of this assessment in the notice of proposed action.

(d) Information required from state agencies for the purpose of completing this assessment may come from existing state publications.

Section 11346.8. Hearing; Actions Affecting Regulations; Public Notification; Conditions

(a) If a public hearing is held, statements, arguments, or contentions, either oral or in writing, or both, shall be permitted. If a public hearing is not scheduled, the state agency shall, consistent with Section 11346.4, afford any interested person or his or her duly authorized representative, the opportunity to present statements, arguments or contentions

(c) No state agency may adopt, amend, or repeal a regulation which has been changed from that which was originally made available to the public pursuant to Section 11346.5, unless the change is (1) nonsubstantial or solely grammatical in nature, or (2) sufficiently related to the original text that the public was adequately placed on notice that the change could result from the originally proposed regulatory action. If a sufficiently related change is made, the full text of the resulting adoption, amendment, or repeal, with the change clearly indicated, shall be made available to the public for at least 15 days before the agency adopts, amends, or repeals the resulting regulation. Any written comments received regarding the change must be responded to in the final statement of reasons required by Section 11346.9.

in writing. In addition, a public hearing shall be held if, no later than 15 days prior to the close of the written comment period, an interested person or his or her duly authorized representative submits in writing to the state agency, a request to hold a public hearing. The state agency shall, to the extent practicable, provide notice of the time, date, and place of the hearing by mailing the notice to every person who has filed a request for notice thereby with the state agency. The state agency shall consider all relevant matter presented to it before adopting, amending, or repealing any regulation.

(b) In any hearing under this section, the state agency or its duly authorized representative shall have authority to administer oaths or affirmations. An agency may continue or postpone a hearing from time to time to the time and at the place as it determines. If a hearing is continued or postponed, the state agency shall provide notice to the public as to when it will be resumed or rescheduled.

(d) No state agency shall add any material to the record of the rulemaking proceeding after the close of the public hearing or comment period, unless adequate provision is made for public comment on that matter.

Section 11346.9. Final Statement of Reasons; Updated Informative Digest; Adopting regulations similar to Federal Law

Every agency subject to this chapter shall do the following:

(a) Prepare and submit to the office with the adopted regulation a final statement of reasons that shall include all of the following:

(1) An update of the information contained in the initial statement of reasons. If the update identifies any data or any technical,

theoretical or empirical study, report, or similar document on which the agency is relying in proposing the adoption or amendment of a regulation that was not identified in the initial statement of reasons, or which was otherwise not identified or made available for public review prior to the close of the public comment period, the agency shall comply with subdivision (d) of Section 11346.8.

(2) A determination as to whether the regulation imposes a mandate on local agencies or school districts. If the determination is that the regulation does contain a local mandate, the agency shall state whether the mandate is reimbursable pursuant to Part 7 (commencing with Section 17500) of Division 4. If the agency finds that the mandate is not reimbursable, it shall state the reasons for that finding.

(3) A summary of each objection or recommendation made regarding the specific adoption, amendment, or repeal proposed, together with an explanation of how the proposed action has been changed to accommodate each objection or recommendation, or the reasons for making

(c) A state agency that adopts or amends a regulation mandated by federal law or regulations, the provisions of which are identical to a previously adopted or amended federal regulation, shall be deemed to have complied with this section if a statement to the effect that a federally mandated regulation or amendment to a regulation is being proposed, together with a citation to where an explanation of the provisions of the regulation can be found, is included in the notice of proposed adoption or amendment prepared pursuant to Section 11346.5. However, the agency shall comply fully with this chapter with respect to any provisions in the regulation which the agency proposes to adopt or amend that are different from the corresponding provisions of the federal regulation.

no change. This requirement applies only to objections or recommendations specifically directed at the agency's proposed action or to the procedures followed by the agency in proposing or adopting the action.

(4) A determination with supporting information that no alternative considered by the agency would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the adopted regulation.

(5) An explanation setting forth the reasons for rejecting any proposed alternatives that would lessen the adverse economic impact on small businesses.

(b) Prepare and submit to the office with the adopted regulation an updated informative digest containing a clear and concise summary of the immediately preceding laws and regulations, if any, relating directly to the adopted, amended, or repealed regulation and the effect of the adopted, amended, or repealed regulation. The informative digest shall be drafted in a format similar to the Legislative Counsel's Digest on legislative bills.

Section 11347.3. File of Rulemaking Proceeding

(a) Every agency shall maintain a file of each rulemaking that shall be deemed to be the record for that rulemaking proceeding. (b) The rulemaking file shall include:

(1) Copies of any petitions received from interested persons proposing the adoption, amendment, or repeal of the regulation, and a copy of any decision provided for by subdivision (d) of Section 11340.7, which grants a petition in whole or in part.

(2) All published notices of proposed adoption, amendment, or repeal of the regulation, and an updated informative digest, the initial statement of reasons, and the final statement of reasons.

(3) The determination, together with the supporting data required by paragraph (5) of subdivision (a) of Section 11346.5.

(4) The determination, together with the supporting data required by paragraph (8) of subdivision (a) of Section 11346.5.

(5) The estimate, together with the supporting data and calculations, required by paragraph (6) of subdivision (a) of Section 11346.5.

(6) All data and other factual information, any studies or reports, and written comments submitted to the agency in connection with the adoption, amendment, or repeal of the regulation.

(7) All data and other factual information, technical, theoretical, and empirical studies or reports, if any, on which the agency is relying in the adoption, amendment, or repeal of a regulation, including any cost impact estimates as required by Section 11346.3.

(8) A transcript, recording, or minutes of any public hearing connected with the adoption, amendment, or repeal of the regulation.

(9) The date on which the agency made available to the public for 15 days prior to the adoption, amendment, or repeal of the regulation the full text as required by subdivision (c) of Section 11346.8 if the agency made changes to the regulation noticed to the public.

(10) The text of regulations as originally proposed and the modified text of regulations, if any, that were made available to the public prior to adoption.

(11) Any other information, statement, report, or data that the agency is required by law to consider or prepare in connection with the adoption, amendment, or repeal of a regulation.

(12) An index or table of contents that identifies each item contained in the rulemaking file. The index or table of contents shall include an affidavit or a declaration under penalty of perjury in the form specified by Section 2015.5 of the Code of Civil Procedure by the agency official who has compiled the rulemaking file, specifying the date upon which the record was closed, and that the file or the copy, if submitted, is complete.

(c) Every agency shall submit to the office with the adopted regulation, the rulemaking file or a complete copy of the rulemaking file.

(d) The rulemaking file shall be made available by the agency to the public, and to the courts in connection with the review of the regulation.

(e) Upon filing a regulation with the Secretary of State pursuant to Section 11349.3, the office shall return the related rulemaking file to the agency, after which no item contained in the file shall be removed, altered, or destroyed or otherwise disposed of. The agency shall maintain the file unless it elects to transmit the file to the State Archives pursuant to subdivision (f).

(f) The agency may transmit the rulemaking file to the State Archives. The file shall include instructions that the Secretary of State shall not remove, alter, or destroy or otherwise dispose of any item contained in the file. Pursuant to Section 12223.5, the Secretary of State may designate a time for the delivery of the rulemaking file to the State Archives in consideration of document processing or storage limitations.

ARTICLE 6. REVIEW OF PROPOSED REGULATIONS

SECTION

11349.	Definitions
11349.1.	Review of Regulations
11349.3.	Approval or Disapproval; Return Upon Request of Agency
11349.4.	Returned Regulation; Readoption; Limited Review
11349.5.	Review by Governor of Decision by Office of Administrative Law; Written Request for Review; Contents; Delivery; Response; Written Decision; Publication; Overruling Decision of Office
11349.6.	Emergency Regulations

Section 11349. Definitions

The following definitions govern the interpretation of this chapter:

(f) "Nonduplication" means that a regulation does not serve the same purpose as a state or federal statute or another regulation. This standard requires that an agency proposing to amend or adopt a regulation must identify any state or federal statute or regulation which is overlapped or duplicated by the proposed regulation and justify any overlap or duplication. This standard is not intended to prohibit state agencies from printing relevant portions of enabling legislation in regulations when the duplication is necessary to satisfy the clarity standard in paragraph (3) of subdivision (a) of Section 11349.1. This standard is intended to prevent the indiscriminate incorporation of statutory language in a regulation.

(a) "Necessity" means the record of the rulemaking proceeding demonstrates by substantial evidence the need for a regulation taking into account the totality of the record. For purposes of this standard, evidence includes, but is not limited to, facts, studies, and expert opinion.

(b) "Authority" means the provision of law which permits or obligates the agency to adopt, amend, or repeal a regulation.

(c) "Clarity" means written or displayed so that the meaning of regulations will be easily understood by those persons directly affected by them.

(d) "Consistency" means being in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or other provisions of law.

(e) "Reference" means the statute, court decision, or other provision of law which the agency implements, interprets, or makes specific by adopting, amending, or repealing a regulation.

Section 11349.1. Review of Regulations

(a) The office shall review all regulations adopted pursuant to the procedure specified in Article 5 (commencing with Section 11346) and submitted to it for publication in the California Regulatory Code Supplement and for transmittal to the Secretary of State and make determinations using all of the following standards:

(1) Necessity.
(2) Authority.
(3) Clarity.
(4) Consistency.
(5) Reference.
(6) Nonduplication.

In reviewing regulations pursuant to this section, the office shall restrict its review to the regulation and the record of the rulemaking proceeding. The office shall approve the regulation or order of repeal if it complies with the standards set forth in this section and with this chapter.

(b) In reviewing proposed regulations for the criteria in subdivision (a), the office may consider the clarity of the proposed regulation in the context of related regulations already in existence.

(c) The office shall adopt regulations governing the procedures it uses in reviewing regulations submitted to it. The regulations shall provide for an orderly review and shall specify the methods, standards, presumptions, and principles the office uses, and the limitations it observes, in reviewing regulations to establish compliance with the standards specified in subdivision (a). The regulations adopted by the office shall ensure that it does not substitute its judgment for that of the rulemaking agency as expressed in the substantive content of adopted regulations.

(B) Cite an accompanying bill appropriating funds as the source from which the Controller may pay the claims of local agencies or school districts.

(C) Attach a letter or other documentation from the Department of Finance which states that the Department of Finance has approved a request by the agency that funds be included in the Budget Bill for the next following fiscal year to reimburse local agencies or school districts for the costs mandated by the regulation.

(D) Attach a letter or other documentation from the Department of Finance which states that the Department of Finance has authorized the augmentation of the amount available for expenditure under the agency's appropriation in the Budget Act which is for reimbursement pursuant to Part 7 (commencing with Section

(d) The office shall return any regulation subject to this chapter to the adopting agency if any of the following occur:

(1) The adopting agency has not prepared the estimate required by paragraph (6) of subdivision (a) of Section 11346.5 and has not included the data used and calculations made and the summary report of the estimate in the file of the rulemaking.

(2) The agency has not complied with Section 11346.3.

(3) The adopting agency has prepared the estimate required by paragraph (6) of subdivision (a) of Section 11346.5, the estimate indicates that the regulation will result in a cost to local agencies or school districts that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4, and the adopting agency fails to do any of the following:

(A) Cite an item in the Budget Act for the fiscal year in which the regulation will go into effect as the source from which the Controller may pay the claims of local agencies or school districts.

17500) of Division 4 to local agencies or school districts from the unencumbered balances of other appropriations in the Budget Act and that this augmentation is sufficient to reimburse local agencies or school districts for their costs mandated by the regulation.

(e) The office shall notify the Department of Finance of all regulations returned pursuant to subdivision (d).

(f) The office shall return a rulemaking file to the submitting agency if the file does not comply with subdivisions (a) and (b) of Section 11347.3. Within three state working days of the receipt of a rulemaking file, the office shall notify the submitting agency of any deficiency identified. If no notice of deficiency is mailed to the adopting agency within that time, a rulemaking file shall be deemed submitted as of the date of its original

receipt by the office. A rulemaking file shall not be deemed submitted until each deficiency identified under this subdivision has been corrected.

This subdivision shall not limit the review of regulations under this article, including, but not limited to, the conformity of rulemaking files to subdivisions (a) and (b) of Section 11347.3.

Section 11349.3. Approval or Disapproval; Return Upon Request of Agency

(a) The office shall either approve a regulation submitted to it for review and transmit it to the Secretary of State for filing

(c) If an agency determines, on its own initiative, that a regulation submitted pursuant to subdivision (a) should be returned by the office prior to completion of the office's review, it may request the return of the regulation. All requests for the return of a regulation shall be memorialized in writing by the submitting agency no later than one week following the request. Any regulation returned pursuant to this subdivision shall be resubmitted to the office for review within the one-year period specified in subdivision (b) of Section 11346.4 or shall comply with Article 5 (commencing with Section 11346) prior to resubmission.

(d) The office shall not initiate the return of a regulation pursuant to subdivision (c) as an alternative to disapproval pursuant to subdivision (b).

Section 11349.4. Returned Regulations; Readoption; Limited Review

(a) A regulation returned to an agency because of failure to meet the standards of or disapprove it within 30 working days after the regulation has been submitted to the office for review. If the office fails to act within 30 days, the regulation shall be deemed to have been approved and the office shall transmit it to the Secretary of State for filing.

(b) If the office disapproves a regulation, it shall return it to the adopting agency within the 30-day period specified in subdivision (a) accompanied by a notice specifying the reasons for disapproval. Within seven calendar days of the issuance of the notice, the office shall provide the adopting agency with a written decision detailing the reasons for disapproval. No regulation shall be disapproved except for failure to comply with the standards set forth in Section 11349.1 or for failure to comply with this chapter. Section 11349.1, because of an agency's failure to comply with this chapter may be rewritten and resubmitted within 120 days of the agency's receipt of the written opinion required by subdivision (b) of Section 11349.3 without complying with the notice and public hearing requirements of Sections 11346.4, 11346.5, and 11346.8 unless the substantive provisions of the regulation have been significantly changed. If the regulation has been significantly changed or was not submitted within 120 days of receipt of the written opinion, the agency shall comply with Article 5 (commencing with Section 11346) and readopt the regulation. The director of the office may, upon a showing of good cause, grant an extension to the 120-day time period specified in this subdivision.

(b) Upon resubmission of a disapproved regulation to the office pursuant to subdivision (a), the office shall only review the resubmitted regulation for those reasons expressly identified in the written opinion required by subdivision (b) of Section 11349.3, or for those issues arising as a result of a substantial change to a provision of the

resubmitted regulation or as a result of intervening statutory changes or intervening court orders or decisions.

(c) When an agency resubmits a withdrawn or disapproved regulation to the office it shall identify the prior withdrawn or disapproved regulation by date of submission to the office, shall specify the portion of the prior rulemaking record that should be included in the resubmission, and shall submit to the office a copy of the prior rulemaking record if that record has been returned to the agency by the office.

(d) The office shall expedite the review of a regulation submitted without significant substantive change.

Section 11349.5. Review by Governor of Decision by Office of Administrative Law; Written Request for Review; Contents; Delivery; Response;

(b) A copy of the agency's Request for Review shall be delivered to the office on the same day it is delivered to the Governor's office. The office shall file its written response to the agency's request with the Governor's Legal Affairs Secretary within 10 days and deliver a copy of its response to the agency on the same day it is delivered to the Governor's office.

(c) The Governor's office shall provide the requesting agency and the office with a written decision within 15 days of receipt of the response by the office to the agency's Request for Review. Upon receipt of the decision, the office shall publish in the California Regulatory Notice Register the agency's Request for Review, the office's response thereto, and the decision of the Governor's office.

(d) The time requirements set by subdivisions (a) and (b) may be shortened by the Governor's office for good cause.

Written Decision; Publication; Overruling Decision of Office

(a) To initiate a review of a decision by the office, the agency shall file a written Request for Review with the Governor's Legal Affairs Secretary within 10 days of receipt of the written opinion provided by the office pursuant to subdivision (b) of Section 11349.3. The Request for Review shall include a complete statement as to why the agency believes the decision is incorrect and should be overruled. Along with the Request for Review, the agency shall submit all of the following:

(1) The office's written decision detailing the reasons for disapproval required by subdivision (b) of Section 11349.3.

(2) Copies of all regulations, notices, statements, and other documents which were submitted to the office.

(e) The Governor may overrule the decision of the office disapproving a proposed regulation, an order repealing an emergency regulation adopted pursuant to subdivision (b) of Section 11346.1, or a decision refusing to allow the readoption of an emergency regulation pursuant to Section 11346.1. In that event, the office shall immediately transmit the regulation to the Secretary of State for filing.

(f) Upon overruling the decision of the office, the Governor shall immediately transmit to the Committees on Rules of both houses of the Legislature a statement of his or her reasons for overruling the decision of the office, along with copies of the adopting agency's initial statement of reasons issued pursuant to Section 11346.2 and the office's statement regarding the disapproval of a regulation issued pursuant to subdivision (b) of Section 11349.3. The Governor's action

and the reasons therefor shall be published in the California Regulatory Notice Register.

Section 11349.6. Emergency Regulations

(a) In the event the adopting agency has complied with Sections 11346.2 to 11346.9, inclusive, prior to the adoption of the regulation as an emergency, the office shall approve or disapprove the regulation in accordance with this article.

(b) Emergency regulations adopted pursuant to subdivision (b) of Section 11346.1 shall be reviewed by the office within 10 calendar days after their submittal to the office. The office shall not file the emergency regulations with the Secretary of State if it determines that the regulation is not necessary for the immediate preservation of the public peace, health and safety, or general welfare, or if it determines that the regulation fails to meet the standards set forth in Section 11349.1, or if it determines the agency failed to comply with subdivisions (b) and (c) of Section 11346.1.

(c) If the office considers any information not submitted to it by the rulemaking agency when determining whether to file emergency regulations, the office shall provide the rulemaking agency with an opportunity to rebut or comment upon that information.

(d) Within 30 days of the filing of a certificate of compliance, the office shall review the regulation and hearing record and approve or order the repeal of an emergency regulation if it determines that the regulation fails to meet the standards set forth in Section 11349.1, or if it determines that the agency failed to comply with this chapter.

ARTICLE 7. REVIEW OF EXISTING REGULATIONS

<u>SECTION</u>

11349.8 Removal of Ineffective and Inoperative Rules

11349.9 Review by Governor of Office's Decision to Remove Inoperative and Ineffective Rules

Section 11349.7. Legislatively Initiated Review

The office, at the request of any standing, select, or joint committee of the Legislature, shall initiate a priority review of any regulation, group of regulations, or series of regulations that the committee believes does not meet the standards set forth in Section 11349.1.

The office shall notify interested persons and shall publish notice in the California Regulatory Notice Register that a priority

11349.7 Legislatively Initiated Review

review has been requested, shall consider the written comments submitted by interested persons, the information contained in the rulemaking record, if any, and shall complete each priority review made pursuant to this section within 90 calendar days of the receipt of the committee's written request. During the period of any priority review made pursuant to this section, all information available to the office relating to the priority review shall be made available to the public. In the event that the office determines that a regulation does not meet the standards set forth in Section 11349.1, it shall order the adopting agency to show cause why the regulation should not be repealed and shall proceed to seek repeal of the regulation as provided by this Section in accordance with the following:

(a) In the event it determines that any of the regulations subject to the review do not meet

the standards set forth in Section 11349.1, the office shall within 15 days of the determination order the adopting agency to show cause why the regulation should not be repealed. In issuing the order, the office shall specify in writing the reasons for its determination that the regulation does not meet the standards set forth in Section 11349.1. The reasons for its determination shall be made available to the public. The office shall also publish its order and the reasons therefor in the California Regulatory

(c) The office shall review and consider all information submitted by the agency in a timely response to the order to show cause why the regulation should not be repealed, and determine whether the regulation meets the standards set forth in Section 11349.1. The office shall make this determination within 60 days of receipt of an agency's response to the order to show cause. If the office does not make a determination within 60 days of receipt of an agency's response to the order to show cause, the regulation shall be deemed to meet the standards set forth in subdivision (a) of Section 11349.1. In making this determination, the office shall also review any written comments submitted to it by the public within 30 days of the publication of the order to show cause in the California Regulatory Notice Register. During the period of review and consideration, the information available to the office relating to each regulation for which the office has issued an order to show cause shall be made available to the public. The office shall notify the adopting agency within two working days of the receipt of information submitted by the public regarding a regulation for which an order to show cause has been issued. If the office determines that a regulation fails to meet the standards, it shall prepare a statement specifying the reasons for its determination. The statement shall be delivered to the adopting agency, the Notice Register. In the case of a regulation for which no, or inadequate, information relating to its necessity can be furnished by the adopting agency, the order shall specify the information which the office requires to make its determination.

(b) No later than 60 days following receipt of an order to show cause why a regulation should not be repealed, the agency shall respond in writing to the office. Upon written application by the agency, the office may extend the time for an additional 30 days. Legislature, and the Governor and shall be made available to the public and the courts. Thirty days after delivery of the statement required by this subdivision the office shall prepare an order of repeal of the regulation and shall transmit it to the Secretary of State for filing.

(d) The Governor, within 30 days after the office has delivered the statement specifying the reasons for its decision to repeal, as required by subdivision (c), may overrule the decision of the office ordering the repeal of a regulation. The regulation shall then remain in full force and effect. Notice of the Governor's action and the reasons therefor shall be published in the California Regulatory Notice Register.

The Governor shall transmit to the rules committee of each house of the Legislature a statement of reasons for overruling the decision of the office, plus any other information that may be requested by either of the rules committees.

(e) In the event that the office orders the repeal of a regulation, it shall publish the order and the reasons therefor in the California Regulatory Notice Register.

Section 11349.8. Removal of Ineffective and Inoperative Rules

(a) If the office is notified of, or on its own becomes aware of, an existing regulation in the California Code of Regulations for which the statutory authority has been repealed or becomes ineffective or inoperative by its own terms, the office shall order the adopting agency to show cause why the regulation should not be repealed for lack of statutory authority and shall notify the Legislature in writing of this order. In issuing the order, the office shall specify in writing the reasons for issuance of the order. "Agency," for purposes of this section and Section 11349.9, refers to the agency that adopted the regulation and, if applicable, the agency that is responsible for administering the regulation in issue.

(b) The agency may, within 30 days after receipt of the written notification, submit in writing to the office any citations, legal arguments, or other information opposing the repeal, including public comments during this period. This section shall not apply where the agency demonstrates in its response that any of the following conditions exists:

(1) The statute or section thereof is simultaneously repealed and substantially reenacted through a single piece of legislation, or where subsequent legislation evinces a specific legislative intent to reenact the substance of the statute or section. When a regulation cites more than one specific statute or section as reference or authority for the adoption of a regulation, and one or more of the statutes or sections are repealed or become ineffective or inoperative, then the only provisions of the regulation which remain in effect shall be those for which the remaining statutes or sections provide specific or general authority.

(2) The statute is temporarily repealed, or rendered ineffective or inoperative by a provision of law which is effective only for a limited period, in which case any regulation described in subdivision (a) is thereby also temporarily repealed, rendered ineffective, or inoperative during that limited period. Any regulation so affected shall have the same force and effect upon the expiration of the limited period during which the provision of law was effective as if that temporary provision had not been enacted.

(3) The statute or section of a statute being repealed, or becoming ineffective or inoperative by its own terms, is to remain in full force and effect as regards events occurring prior to the date of repeal or ineffectiveness, in which case any regulation adopted to implement or interpret that statute shall likewise be deemed to remain in full force and effect in regards to those same events.

(c) This section shall not be construed to deprive any person or public agency of any substantial right which would have existed prior to, or hereafter exists subsequent to, the effective date of this section.

(d) Thirty days after receipt of the agency's opposition material, or the close of the 30-day agency and public response period if no response is submitted, the office shall do one of the following:

(1) Inform the agency and the Legislature in writing that the office has withdrawn its order to show cause.

(2) Issue a written notice to the agency specifying the reasons for the repeal and its intent to file a Notice of Repeal of the invalid regulation with the Secretary of State. Within seven calendar days of the filing of the Notice of Repeal, the office shall provide the agency, the Governor, and the Legislature with a written decision detailing the reasons for the repeal and a copy of the Notice of Repeal, and publish the office's written decision in the California Regulatory Notice Register.

(e) The office shall order the removal of the repealed regulation from the California Code

of Regulations within 30 days after filing the Notice of Repeal, if the agency has not appealed the office's decision, or upon receipt of notification of the Governor's decision upholding the office's decision, if an appeal has been filed pursuant to Section 11349.9.

Section 11349.9. Review by Governor of Office's Decision to Remove Inoperative and Ineffective Rules

(a) To initiate a review of the office's Notice of Repeal pursuant to Section 11349.8, the agency shall appeal the office's decision by filing a written Request for Review with the Governor's Legal Affairs Secretary within 10 days of receipt of the Notice of Repeal and written decision provided for by paragraph (2) of subdivision

(c) The Governor's office shall provide the requesting agency and the office with a written decision within 15 days of receipt of the response by the office to the agency's Request for Review. Upon receipt of the decision, the office shall publish in the California Regulatory Notice Register the agency's Request for Review, the office's response thereto, and the decision of the Governor's office.

(d) The time requirements set by subdivisions (a) and (b) may be shortened by the Governor's office for good cause.

(e) In the event the Governor overrules the decision of the office, the office shall immediately transmit the regulation to the Secretary of State for filing.

(f) Upon overruling the decision of the office, the Governor shall transmit to the rules committees of both houses of the Legislature a statement of the reasons for overruling the decision of the office.

(d) of Section 11349.8. The Request for Review shall include a complete statement as to why the agency believes the decision is incorrect and should be overruled. Along with the Request for Review, the agency shall submit all of the following:

(1) The office's written opinion detailing the reasons for repeal required by paragraph (2) of subdivision (d) of Section 11349.8.

(2) Copies of all statements and other documents that were submitted to the office.

(b) A copy of the agency's Request for Review shall be delivered to the office on the same day it is delivered to the Governor's office. The office shall file its written response to the agency's request with the Governor's Legal Affairs Secretary within 10 days, and deliver a copy of its response to the agency on the same day it is delivered to the Governor's office.

ARTICLE 8. JUDICIAL REVIEW

SECTION	
11350.	Declaratory Relief; Grounds for Declaration of Invalidity
11350.3	Judicial Declaration as to Validity of Regulation Disapproved or Ordered Repealed; Action for Declaratory Relief

Section 11350. Declaratory Relief; Grounds for Declaration of Invalidity

(a) Any interested person may obtain a judicial declaration as to the validity of any regulation by bringing an action for declaratory relief in the superior court in accordance with the Code of Civil Procedure. The right to judicial determination shall not be

affected by the failure either to petition or to seek reconsideration of a petition filed pursuant to Section 11340.7 before the agency promulgating the regulations. The regulation may be declared to be invalid for a substantial failure to comply with this chapter, or, in the case of an emergency regulation or order to repeal, upon the ground that the facts recited in the statement do not constitute an emergency within the provisions of Section 11346.1.

(b) In addition to any other ground that may exist, a regulation may be declared invalid if either of the following exists:

(1) The agency's determination that the regulation is reasonably necessary to effectuate the purpose of the statute, court decision, or other provision of law that is being implemented, interpreted, or made specific by the regulation is not supported by substantial evidence.

(2) The agency declaration pursuant to paragraph (8) of subdivision (a) of Section 11346.5 is in conflict with substantial evidence in the record.

For purposes of this section, the record shall be deemed to consist of all material maintained in the file of the rulemaking proceeding as defined in Section 11347.3.

(c) The approval of a regulation by the office or the Governor's overruling of a decision of the office disapproving a regulation shall not be considered by a court in any action for declaratory relief brought with respect to a regulation.

Section 11350.3. Judicial Declaration as to Validity of Regulation Disapproved or Ordered Repealed; Action for Declaratory Relief

Any interested person may obtain a judicial declaration as to the validity of a regulation which the office has disapproved or ordered repealed pursuant to Section 11349.3, 11349.6, or 11349.7 by bringing an action for declaratory relief in the superior court in accordance with the Code of Civil Procedure. The court may declare the regulation valid if it determines that the regulation meets the standards set forth in Section 11349.1 and that the agency has complied with this chapter. If the court so determines, it may order the office to immediately file the regulation with the Secretary of State.

ARTICLE 9. SPECIAL PROCEDURES

<u>SECTION</u>

11351.	Application of Articles to Public Utilities Commission, Division of Worker's Compensation, and Workers' Compensation Appeals Board
11352.	Water quality certification; waste discharge requirements, permits, and waivers; application of chapter to certain actions
11353.	State water quality control policies, plans, and guidelines; adoption or revision; application of chapter; review; procedures; requirements
11354.	Application of Sections 11352 and 11353 in civil actions pending on June 1, 1992
11356.	Building Standards
11357.	Department of Finance
11359.	Fire and Panic Safety

Section 11351. Application of Articles to Public Utilities Commission, Division of Worker's Compensation, and Workers' Compensation Appeals Board

(a) Except as provided in subdivision (b), Article 5 (commencing with Section 11346), Article 6 (commencing with Section 11349), Article 7 (commencing with Section 11349.7), and Article 8 (commencing with Section 11350) shall not apply to the Public Utilities Commission or the Workers' Compensation Appeals Board, and Article 3 (commencing with Section 11343) and Article 4 (commencing with Section 11344) shall apply only to the rules of procedure of these state agencies.

(b) The Public Utilities Commission and the Workers' Compensation Appeals Board shall comply with paragraph (5) of subdivision (a) of Section 11346.4 with respect to regulations that are required to be filed with

(b) The issuance, denial, or revocation of waste discharge requirements and permits pursuant to Sections 13263 and 13377 of the Water Code and waivers issued pursuant to Section 13269 of the Water Code.

Section 11353. State water quality control policies, plans, and guidelines; adoption or revision; application of chapter; review; procedures; requirements.

(a) Except as provided in subdivision (b), this chapter does not apply to the adoption or revision of state policy for water quality control and the adoption or revision of water quality control plans and guidelines pursuant to Division 7 (commencing with Section 13000) of the Water Code.

(b) (1) Any policy, plan, or guideline, or any revision thereof, that the State Water Resources Control Board has adopted or that a court determines is subject to this part, after June 1, 1992, shall be submitted to the office. the Secretary of State pursuant to Section 11343.

(c) Article 8 (commencing with Section 11350) shall not apply to the Division of Workers' Compensation.

Section 11352. Water quality certification; waste discharge requirements, permits, and waivers; application of chapter to certain actions.

The following actions are not subject to this chapter:

(a) The issuance, denial, or waiver of any water quality certification as authorized under Section 13160 of the Water Code.

(2) The State Water Resources Control Board shall include in its submittal to the office all of the following:

(A) A clear and concise summary of any regulatory provisions adopted or approved as part of that action, for publication in the California Code of Regulations.

(B) The administrative record for the proceeding.

(C) A summary of the necessity for the regulatory provision.

(D) A certification by the chief legal officer of the State Water Resources Control Board that the action was taken in compliance with all applicable procedural requirements of Division 7 (commencing with Section 13000) of the Water Code.

(3) Paragraph (2) does not limit the authority of the office to review any regulatory provision which is part of the policy, plan, or guideline submitted by the State Water Resources Control Board.

(4) The office shall review the regulatory provisions to determine compliance with the standards of necessity, authority, clarity, consistency, reference, and nonduplication set forth in subdivision (a) of Section 11349.1.

The office shall also review the responses to public comments prepared by the State Water Resources Control Board or the appropriate regional water quality control board to determine compliance with the public participation requirements of the Federal Water Pollution Control Act (33 U.S.C. Sec. 1251 et seq.). The office shall restrict its review to the regulatory provisions and the administrative record of the proceeding. Sections 11349.3, 11349.4, 11349.5, and 11350.3 shall apply to the review by the office to the extent that those sections are consistent with this section.

(5) The policy, plan, guideline, or revision shall not become effective unless and until the regulatory provisions are approved by the office in accordance with subdivision (a) of Section 11349.3.

(6) Upon approval of the regulatory provisions, the office shall transmit to the Secretary of State for filing the clear and concise summary of the regulatory provisions submitted by the State Water Resources Control Board.

(7) Any proceedings before the State Water Resources Control Board or a California regional water quality control board to take any action subject to this subdivision shall be conducted in accordance with the procedural requirements of Division 7 (commencing with Section 13000) of the Water Code, together with any applicable requirements of the Federal Water Pollution Control Act (33 U.S.C. Sec. 1251 et seq.), and the requirements of this chapter, other than the requirement for review by the office in accordance with this subdivision, shall not apply.

(8) This subdivision shall not provide a basis for review by the office under this subdivision or Article 6 (commencing with Section 11349) of any such policy, plan, or guideline adopted or revised prior to June 1, 1992.

(c) Subdivision (a) does not apply to a provision of any policy, plan, guideline, or revision, as applied to any person who, as of June 1, 1992, was a party to a civil action challenging that provision on the grounds that it has not been adopted as a regulation pursuant to this chapter.

(d) Copies of the policies, plans, and guidelines to which subdivision (a) applies shall be maintained at central locations for inspection by the public. The State Water Resources Control Board shall maintain, at its headquarters in Sacramento, a current copy of each policy, plan, or guideline in effect. Each regional water quality control board shall maintain at its headquarters a current copy of each policy, plan, or guideline in effect in its respective region. Any revision of a policy, plan, or guideline shall be made available for inspection by the public within 30 days of its effective date.

Section 11354. Application of Sections 11352 and 11353 in civil actions pending on June 1, 1992.

Sections 11352 and 11353 do not affect any court's determination, relating to the applicability of this chapter to any provision of a policy, plan, or guideline, in a civil action which was pending on June 1, 1992, and on that date included a challenge to a provision of a policy, plan, or guideline on the grounds that it has not been adopted in accordance with this chapter.

Section 11354.1. Amendments to San Francisco Bay Plan or Special Area Plan, Suisun Marsh Protection Plan, Suisun Marsh local protection program

(a) For purposes of this section, "commission" means the San Francisco Bay Conservation and Development Commission.

(b) Except as provided in subdivision (d), this chapter does not apply to any policy, plan, or guideline adopted by the commission prior to January 1, 1996, pursuant to Chapter 5 (commencing with Section 66650) of Title 7.2 of this code or Division 19 (commencing with Section 29000) of the Public Resources Code.

(c) The issuance or denial by the commission of any permit pursuant to subdivision (a) of Section 66632, and the issuance or denial by, or appeal to, the commission of any permit pursuant to Chapter 6 (commencing with Section 29500) of

(A) A clear and concise summary of any regulatory provision adopted or approved by the commission as part of the proposed change for publication in the California Code of Regulations.

(B) The administrative record for the proceeding, and a list of the documents relied upon in making the change. Proposed additions to the plans shall be indicated by underlined text, and proposed deletions shall be indicated by strike-through text in documents submitted as part of the administrative record for the proceeding.

(3) The office shall review the regulatory provisions to determine compliance with the standards of necessity, authority, clarity, consistency, reference, and nonduplication set forth in subdivision (a) of Section 11349.1. The office shall also review the responses to public comments prepared by the commission to determine compliance with the public participation requirements of Sections 11000 to 11007, inclusive, of Title 14 of the California Code of Regulations, and to ensure that the commission considers all relevant matters presented to it before adopting, amending, or repealing any regulatory

Division 19 of the Public Resources Code, are not subject to this chapter.

(d)(1) Any amendments or other changes to the San Francisco Bay Plan or to a special area plan pursuant to Chapter 5 (commencing with Section 66650) of Title 7.2, and amendments or other changes to the Suisun Marsh Protection Plan, as defined in Section 29113 of the Public Resources Code, or in the Suisun Marsh local protection program, as defined in Section 29111 of the Public Resources Code, adopted by the commission on and after January 1, 1996, shall be submitted to the office.

(2) The commission shall include in its submittal to the office pursuant to paragraph (1) both of the following documents:
provision, and that the commission explains the reasons for not modifying a proposed plan change to accommodate an objection or recommendation. The office shall restrict its review to the regulatory provisions and the administrative record of the proceeding. Sections 11349.3, 11349.4, 11349.5, and 11350.3 shall apply to the review by the office to the extent that those sections are consistent with this section.

(4) In reviewing proposed changes to the commission's plans for the criteria specified in subdivision (a) of Section 11349.1, the office shall consider the clarity of the proposed plan change in the context of the commission's existing plans.

(5) The proposed plan or program change subject to this subdivision shall not become effective unless and until the regulatory provisions are approved by the office in accordance with subdivision (a) of Section 11349.3.

(6) Upon approval of the regulatory provisions, the office shall transmit to the Secretary of State for filing the clear and concise summary of the regulatory provisions submitted by the commission.

(e) Except as provided in subdivisions (b) and (c), the adoption of any regulation by the commission shall be subject to this chapter in all respects.

Section 11356. Building Standards

(a) Article 6 (commencing with Section 11349) is not applicable to any building standards or administrative regulations that apply directly to the implementation or enforcement of a building standard, subject to the approval of the State Building Standards Commission.

(b) Article 5 (commencing with Section 11346) is applicable to those building standards, except that the office shall not disapprove those building standards nor refuse to publish any notice of proposed building standards if either has been approved by, and submitted to, the office by the State Building Standards Commission pursuant to Section 18935 of the Health and Safety Code.

Section 11357. Department of Finance Criteria for Cost Impact Estimates

(a) The Department of Finance shall adopt and update, as necessary, instructions for inclusion in the State Administrative Manual prescribing the methods that any agency subject to this chapter shall use in making the determination required by paragraph (5) and the estimate required by paragraph (6) of subdivision (a) of Section 11346.5. The instructions shall include, but need not be limited to, the following:

(1) Guidelines governing the types of data or assumptions, or both, that may be used, and the methods that shall be used, to calculate the estimate of the cost or savings to public agencies mandated by the regulation for which the estimate is being prepared.

(2) The types of direct or indirect costs and savings that should be taken into account in preparing the estimate.

(3) The criteria that shall be used in determining whether the cost of a regulation must be funded by the state pursuant to Section 6 of Article XIII B of the California Constitution and Part 7 (commencing with Section 17500) of Division 4.

(4) The format the agency preparing the estimate shall follow in summarizing and reporting its estimate of the cost or savings to state and local agencies, school districts, and in federal funding of state programs that will result from the regulation.

(b) Any action by the Department of Finance to adopt and update, as necessary, instructions to any state or local agency for the preparation, development, or administration of the state budget, including any instructions included in the State Administrative Manual, shall be exempt from this chapter.

(c) The Department of Finance may review any estimate prepared pursuant to this section for content including, but not limited to, the data and assumptions used in its preparation.

Section 11359. Fire and Panic Safety Regulations; Approval Requirements; Exemption

(a) Except as provided in subdivision (b), on and after January 1, 1982, no new regulation or the amendment or repeal of any regulation, which regulation is intended to promote fire and panic safety or provide fire protection and prevention, including fire suppression systems, equipment, or alarm regulation, is valid or effective unless it is submitted by, or approved in writing by, the State Fire Marshal

before transmittal to the Secretary of State or the Office of Administrative Law.

(b) Approval of the State Fire Marshal is not required if the regulation is expressly required to be at least as effective as federal standards published in the Federal Register pursuant to Section 6 of the Occupational Safety and Health Act of 1970 (P.L. 91-596) within the time period specified by federal law and as provided in subdivision (b) of Section 142.4 of the Labor Code, and as approved by the Occupational Safety and Health Administration of the United States Department of Labor as meeting the requirements of subdivision (a) of Section 142.3 of the Labor Code, unless the regulation is determined by the State Fire Marshal to be less effective in promoting fire and panic safety than regulations adopted by the State Fire Marshal.

SB 523 EXCERPTS RELATED TO RULEMAKING

GOVERNMENT CODE

Title 2 -- "Government of the State of California," Division 3--"Executive Department," Part 1--"State Agencies and Departments," Chapter 4--"Office of Administrative Hearings," Article 1--"General Provisions"

[Excerpt from Chapter 4]

Chapter 4--"Office of Administrative Hearings," Article 1--"General Provisions" [Excerpt]

Section 11370. Citation

Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), Chapter 4.5 (commencing with Section 11400), and Chapter 5 (commencing with Section 11500) constitute, and may be cited as, the Administrative Procedure Act.

Law Revision Commission Comment:

Section 11370 is amended to recognize the addition of Sections 11400-11470.50. The administrative adjudication provisions of the Administrative Procedure Act are found in Chapters 4.5 (administrative adjudication: general provisions) and 5 (administrative adjudication: formal hearing). Section 11400 (administrative adjudication provisions of Administrative Procedure Act). [25 Cal.L.Rev. Comm. Reports 55 (1995)]

Chapter 4.5--"Administrative Adjudication: General Provisions," Article 1, "Preliminary Provisions" [Excerpt]

Section 11400.20. Regulations

(a) Before, on, or after July 1, 1997, an agency may adopt interim or permanent regulations to govern an adjudicative proceeding under this chapter or Chapter 5 (commencing with Section 11500). Nothing in this section authorizes an agency to adopt regulations to govern an adjudicative proceeding required to be conducted by an administrative law judge employed by the Office of Administrative Hearings, except to the extent the regulations are otherwise authorized by statute.

(b) Except as provided in Section 11351:

(1) Interim regulations need not comply with Article 5 (commencing with Section

11346) or Article 6 (commencing with Section 11349) of Chapter 3.5, but are governed by Chapter 3.5 (commencing with Section 11340) in all other respects.

(2) Interim regulations expire on December 31, 1998, unless earlier terminated or replaced by or readopted as permanent regulations under paragraph (3). If on December 31, 1998, an agency has completed proceedings to replace or readopt interim regulations and has submitted permanent regulations for review by the Office of Administrative Law, but permanent regulations have not yet been filed with the Secretary of State, the interim regulations are extended until the date permanent regulations are filed with the Secretary of State or March 31, 1999, whichever is earlier.

(3) Permanent regulations are subject to all the provisions of Chapter 3.5 (commencing with Section 11340), except that if by December 31, 1998, an agency has submitted the regulations for review by the Office of Administrative Law, the regulations are not subject to review for necessity under Section 11349.1 or 11350.

Law Revision Commission Comment:

1995 Addition

Subdivision (a) of Section 11400.20 makes clear that an agency may act to adopt regulations under this division after enactment but before the division becomes operative. This will enable the agency to have any necessary regulations in place on the operative date. It should be noted that revisions of regulations that merely conform to the new law may be adopted by simplified procedures under the rulemaking provisions of the Administrative Procedure Act pursuant to 1 California Code of Regulations Section 100.

Under subdivision (b), an agency may adopt interim procedural regulations without the normal notice and hearing and Office of Administrative Law review processes of the Administrative Procedure Act. However, this does not excuse compliance with the other provisions of the Administrative Procedure Act, including but not limited to the requirements that (1) regulations be consistent and not in conflict with statute and reasonably necessary to effectuate the purpose of the statute (Section 11342.2), (2) regulations be filed and published (Sections 11343-11344.9), and (3) regulations are subject to judicial review (Section 11350). Compliance with these provisions is not required for agencies exempted by statute. See Section 11351.

Interim regulations are only valid through December 31, 1998. They may be replaced by or readopted as permanent regulations before then, through the standard administrative rulemaking process. In case permanent regulations are pending on December 31, 1998, interim regulations may be extended up to three months.

Subdivision (b)(3) makes clear that permanent regulations governing administrative adjudication are subject to normal rulemaking procedures, other than review for necessity under Section 11349.1 (Office of Administrative Law) or 11350 (declaratory relief) in the case of permanent regulations promulgated during the transitional period. [25 Cal.L.Rev.Comm. Reports 55 (1995)]

1996 Amendment

Subdivision (a) of Section 11400.20 is amended to permit use of the procedure

provided in this section for adoption of interim or permanent regulations under the formal hearing procedure, Chapter 5 (commencing with Section 11500).

Subdivision (a) makes clear that the authority of an agency to adopt regulations governing its hearings does not apply to hearings required to be conducted for it by the Office of Administrative Hearings, unless there is express statutory authority for the regulations. Examples of express statutory authority include:

It should be noted that the provision of Section 11425.40(d) allowing an agency that conducts an adjudicative proceeding to provide by regulation for peremptory challenge of the presiding officer applies to the Office of Administrative Hearings and not the agency for which the Office of Administrative Hearings is conducting the proceeding. See Comment to Section 11425.40(d).

Nothing in subdivision (a) precludes regulations governing matters peripheral to administrative adjudication proceedings, such as a requirement that a person maintain an address with the agency for the purpose of notice. [26 Cal. L. Revision Comm'n Reports 171 (1996)]

ARTICLE 6. ADMINISTRATIVE ADJUDICATION BILL OF RIGHTS

[EXCERPT]

11425.10. Governing procedures; requirements

[Excerpt]

Section 11420.10 (alternative dispute resolution)
Section 11425.50 (penalty guidelines)
Section 11440.10 (administrative review)
Section 11440.50 (intervention)
Sections 11445.20 and 11445.50 (informal hearing procedure)
Section 11460.20 (emergency decision)
Section 11518.5 (correction of mistakes and clerical errors in decision)

(a) The governing procedure by which an agency conducts an adjudicative proceeding is subject to all of the following requirements:

. . .

(7) A decision may not be relied on as precedent unless the agency designates and indexes the decision as precedent as provided in Section 11425.60.

. . .

(b) The requirements of this section apply to the governing procedure by which an agency conducts an adjudicative proceeding without further action by the agency, and prevail over a conflicting or inconsistent provision of the governing procedure, subject to Section 11415.20. The governing procedure by which an agency conducts an adjudicative proceeding may include provisions equivalent to, or more protective of the rights of the person to which the agency action is directed than, the requirements of this section.

Law Revision Commission Comment:

. . .

Under subdivision (b), this section is self-executing--it is part of the governing procedure by which an agency conducts an adjudicative proceeding whether or not regulations address the matter. The section does not, however, override conflicting or inconsistent state statutes, or federal statutes or regulations. Section 11415.20 (conflicting or inconsistent statute controls). If the governing procedure includes regulations that are at variance with the requirements of this section, it is desirable, but not necessary, that the agency revise the regulations; the requirements of this section apply regardless of the regulations. Conforming regulations may be adopted by a simplified procedure under the rulemaking provisions of the Administrative Procedure Act pursuant to 1 California Code of Regulations Section 100. Nothing in this section precludes the agency from adopting additional or more extensive requirements than those prescribed by this section.

. . .

11425.50. Written decision; contents

[Excerpt]

. . .

(e) A penalty may not be based on a guideline, criterion, bulletin, manual, instruction, order, standard of general application or other rule subject to Chapter 3.5 (commencing with Section 11340) unless it has been adopted as a regulation pursuant to Chapter 3.5 (commencing with Section 11340).

Law Revision Commission Comment:

. . .

Subdivision (e) is consistent with the rulemaking provisions of the Administrative Procedure Act. See Section 11340.5 ("underground regulations"). A penalty based on a precedent decision does not violate subdivision (e). Section 11425.60 (precedent decisions). If a penalty is based on an "underground rule"--one not adopted as a regulation as required by the rulemaking provisions of the Administrative Procedure Act--a reviewing court should exercise discretion in deciding the appropriate remedy. Generally the court should remand to the agency to set a new penalty without reliance on the underground rule but without setting aside the balance of the decision. Remand would not be appropriate in the event that the penalty is, in light of the evidence, the only reasonable application of duly adopted law. Or a court might decide the appropriate penalty itself without giving the normal deference to agency discretionary judgments. See Armistead v. State Personnel Bd., 22 Cal.3d 198, 583 P.2d 744, 149 Cal.Rptr. 1 (1978).

11425.60. Precedent; designation; index

(a) A decision may not be expressly relied on as precedent unless it is designated as a precedent decision by the agency.

(b) An agency may designate as a precedent decision a decision or part of a decision that contains a significant legal or policy determination of general application that is likely to recur. Designation of a decision or part of a decision as a precedent decision is not rulemaking and need not be done under

Chapter 3.5 (commencing with Section 11340). An agency's designation of a decision or part of a decision, or failure to designate a decision or part of a decision, as a precedent decision is not subject to judicial review.

(c) An agency shall maintain an index of significant legal and policy determinations made in precedent decisions. The index shall be updated not less frequently than annually, unless no precedent decision has been designated since the last preceding update. The index shall be made available to the public by subscription, and its availability shall be publicized annually in the California Regulatory Notice Register.

(d) This section applies to decisions issued on or after July 1, 1997. Nothing in this section precludes an agency from designating and indexing as a precedent decision a decision issued before July 1, 1997.

Law Revision Commission Comment:

1995 Addition

Section 11425.60 limits the authority of an agency to rely on previous decisions unless the decisions have been publicly announced as precedential.

The first sentence of subdivision (b) recognizes the need of agencies to be able to make law and policy through adjudication as well as through rulemaking. It codifies the practice of a number of agencies to designate important decisions as precedential. See Sections 12935(h) (Fair Employment and Housing Commission), 19582.5 (State Personnel Board); Unemp.Ins.Code section 409 (Unemployment Insurance Appeals Board). Section 11425.60 is intended to encourage agencies to articulate what they are doing when they make new law or policy in an adjudicative decision. An agency may not by precedent decision revise or amend an existing regulation or adopt a rule that has no adequate legislative basis.

Under the second sentence of subdivision (b), this section applies notwithstanding Section 11340.5 ("underground regulations"). See 1993 OAL Det. No. 1 (determination by Office of Administrative Law that agency designation of decision as precedential violates former Government Code Section 11347.5 [now 11340.5] unless made pursuant to rulemaking procedures). The provision is drawn from Government Code Section 19582.5 (expressly exempting the State Personnel Board's precedent decision designations from rulemaking procedures). See also Unemp.Ins.Code section 409 (Unemployment Insurance Appeals Board). Nonetheless, agencies are encouraged to express precedent decisions in the form of regulations, to the extent practicable.

The index required by subdivision (c) is a public record, available for public inspection and copying.

Subdivision (d) minimizes the potential burden on agencies by making the precedent decision requirements prospective only. [25 Cal.L.Rev.Comm. Reports 55 (1995)]

1996 Amendment

Subdivision (d) of Section 11425.60 is amended to make clear that if an agency designates as precedential a decision issued before July 1, 1997, the decision must be indexed pursuant to subdivision (c). [26 Cal. L. Revision Comm'n Reports 173 (1996)]

ARTICLE 13. EMERGENCY DECISION [Excerpt]

11460.20. Emergency decision for temporary, interim relief; regulation

(a) An agency may issue an emergency decision for temporary, interim relief under

(1) Define the specific circumstances in which an emergency decision may be issued under this article.

(2) State the nature of the temporary, interim relief that the agency may order.

(3) Prescribe the procedures that will be available before and after issuance of an emergency decision under this article. The procedures may be more protective of the person to which the agency action is directed than those provided in this article.

(c) This article does not apply to an emergency decision, including a cease and desist order or an interim or temporary suspension order, issued pursuant to other express statutory authority.

Law Revision Commission Comment:

Section 11460.20 requires specificity in agency regulations that adopt an emergency decision procedure. Notwithstanding this article, a statute on emergency decisions, including cease and desist orders and temporary suspension orders, applicable to a particular agency or proceeding prevails over the provisions of this article. Section 11415.20 (conflicting or inconsistent statute controls). [25 Cal.L.Rev.Comm. Reports 55 (1995)]

ARTICLE 14. DECLARATORY DECISION [Excerpt]

this article if the agency has adopted a regulation that provides that the agency may use the procedure provided in this article.

(b) The regulation shall elaborate the application of the provisions of this article to an emergency decision by the agency, including all of the following:

Section 11465.10. Authority

Subject to the limitations in this article, an agency may conduct an adjudicative proceeding under the declaratory decision procedure provided in this article.

Law Revision Commission Comment:

Article 14 (commencing with Section 11465.10) creates, and establishes all of the requirements for, a special proceeding to be known as a "declaratory decision" proceeding. The purpose of the proceeding is to provide an inexpensive and generally available means by which a person may obtain fully reliable information as to the applicability of agency administered law to the person's particular circumstances.

The declaratory decision procedure is thus quasi-adjudicative in nature, enabling an agency to issue in effect an advisory opinion concerning assumed facts submitted by a person. The procedure does not authorize an agency "declaration" of a guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule that is an "underground regulation." See Section 11340.5.

The declaratory decision procedure provided in this article applies only to decisions subject to this chapter, including a hearing under Chapter 5 (formal hearing). See Sections 11410.50 (application where

formal hearing procedure required), 11501 (application of chapter). See also Section 11410.10 (application to constitutionally and statutorily required hearings).

It should be noted that an agency not governed by this chapter nonetheless has general power to issue a declaratory decision. This power is derived from the power to adjudicate. See e.g., M. Asimow, Advice to the Public from Federal Administrative Agencies 121-22 (1973).

Section 11465.70. Model regulations

(a) The Office of Administrative Hearings shall adopt and promulgate model regulations under this article that are consistent with the public interest and with the general policy of this article to facilitate and encourage agency issuance of reliable advice. The model regulations shall provide for all of the following:

(1) A description of the classes of circumstances in which an agency will not issue a declaratory decision.

(2) The form, contents, and filing of an application for a declaratory decision.

(3) The procedural rights of a person in relation to an application.

(4) The disposition of an application.

(b) The regulations adopted by the Office of Administrative Hearings under this article apply in an adjudicative proceeding unless an agency adopts its own regulations to govern declaratory decisions of the agency.

(c) This article does not apply in an adjudicative proceeding to the extent an agency by regulation provides inconsistent rules or provides that this article is not applicable in a proceeding of the agency.

Law Revision Commission Comment:

Section 11465.70 is drawn from 1981 Model State APA section 2-103(b). An agency may choose to preclude declaratory decisions altogether.

Regulations should specify all of the details surrounding the declaratory decision process including a specification of the precise form and contents of the application; when, how, and where an application is to be filed; whether an applicant has the right to an oral argument; the circumstances in which the agency will not issue a decision; and the like.

Regulations also should require a clear and precise presentation of facts, so that an agency will not be required to rule on the application of law to unclear or excessively general facts. The regulations should make clear that, if the facts are not sufficiently precise, the agency can require additional facts or a narrowing of the application.

Agency regulations on this subject will be valid so long as the requirements they impose are reasonable and are within the scope of agency discretion. To be valid these rules must also be consistent with the public interest--which includes the efficient and effective accomplishment of the agency's mission-- and the express general policy of this article to facilitate and encourage the issuance of reliable agency advice. Within these general limits, therefore, an agency may include in its rules reasonable standing, ripeness, and other requirements for obtaining a declaratory decision. [25 Cal.L.Rev.Comm. Reports 55 (1995)]

OFFICE OF ADMINISTRATIVE LAW REGULATIONS; *Title 1*,
Division 1,Chapter 1,
California Code of Regulations

ARTICLE 1. Chapter Definitions.

SECTION
1. Chapter Definitions

Section 1. Chapter Definitions.

(a) The following definitions shall apply to the regulations contained in this Chapter:

(1) "APA" means the part of the California Administrative Procedure Act appearing in California Government Code, Title 2, Division 3, Part 1, Chapter 3.5, commencing with Section 11340, which generally governs the adoption, amendment, or repeal of regulations by California state agencies.

(2) "Certificate of Compliance" means a statement by the head of the rulemaking agency that the agency has complied with the provisions of Government Code Sections 11346.2 through 11346.9 prior to the expiration of the effective period of the emergency regulations. After the adoption of emergency regulations, this statement is submitted to OAL for review along with the regulatory text and the rulemaking file.

(3) "Form 400" means the form entitled "Notice Publication/Regulations Submission" STD. 400 (rev. 4-99), which appears in Appendix A to Article 2 of this Chapter.

(4) "OAL" means "the Office of Administrative Law."

(5) "Regular rulemaking" means the original submission of a regulatory action, other than a Certificate of Compliance filing, subject to review by OAL within thirty working days of receipt.

NOTE: Authority cited: Section 11342.4, Government Code. Reference: Sections 11340.2, 11342(b), 11343(c) and (d), 11346.1(e), 11349.3(a), 11349.6(d), and 11370, Government Code.

HISTORY:

1. New section filed 6-26-90; operative 7-25-90 (Register 90, No.35).

2. Change without regulatory effect pursuant to section 100, Title 1, California Code of Regulations substituting "2-91" for "7/90" in subsection (a)(3); and, revising Form 400 as follows: relocating the "agency" and "agency file number" blocks to the top of the form; substituting the word "topic" for "subject" in block A.1; enlarging the print size of "agency" at the top of the form; relocating the "title(s)" block from below to above the "sections affected" block; changing the revision date of the form from "7/90" to "2-91" at the top of the front and back pages of the form. Filed 3-7-91; operative 3-7-91 (Register 91, No. 15).

3. Change without regulatory effect pursuant to section 100, Title 1, California Code of Regulations substituting "3-92" for "2-91" in subsection (a)(3). Revising the Form 400 as follows: in section 2, changing placement of box category "Changes Without Regulatory Effect (Cal.Code Regs., title 1, section 100)" by deleting it and adding it back in after "Other," and replacing it with "Emergency (Gov. Code section 11346.1(b))"; changing the placement of "Emergency (Gov. Code, section 11346.1(b))" by deleting it and adding it back to where the "Changes Without Regulatory Effect" spot was; replacing the former "Emergency" location with "Resubmittal of disapproved or withdrawn emergency filing" category. Also deleting the "2-91" revision date at the top left hand corner of the form and replacing it with "3-92." Filed 3/25/92; operative upon filing (Register 92, No. 1-8).

4. Change without regulatory effect pursuant to Section 100, Title 1, California Code of Regulations substituting "11346.2" for "11346.4" and "11346.9" for "11346.8" in subsection (a)(2); and "11342(b)" for "11342(d)" in the reference citation under "NOTE." Filed 1-3-95; operative upon filing (Reg. 95 , No. 1).

5. Amendment of subsections (a)(3) and (a)(5) filed 1-8-99; operative 2-7-99 (Register 99, No. 2).

6. Editorial correction of printing error in subsection(a)(2). (Register , No.).

7. Change without regulatory effect amending subsection (a)(3) filed 4-19-99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No.).

ARTICLE 2. Criteria Applied in the Review of Proposed Regulations.

SECTION

4. "Plain English" requirements
5. Submission of Notices for Publication (Form 400)
6. Submission of Regulatory Actions (Form 400)
7. Marking File Numbers on Documents Submitted to OAL
10. "Necessity"
11. "Necessity" in the Context of Mandated Regulations
12. "Nonduplication"
14. "Authority" and "Reference"
16. "Clarity"
20. "Incorporation by Reference"
40. "Nonsubstantial Changes"
42. "Sufficiently Related"
44. "Public Availability of Changes to Regulations"
45. 15-Day Public Availability of Supporting Documents and Information
46. "Clearly Indicated" Changes
55. OAL Review of Public Comments
56. Emergency Regulations Adopted After Completion of Rulemaking Procedures
84. Incorporation of Prior Files by Reference
86. Statement of Mailing Notice
90. "Transcript," "Recording," or "Minutes"
100. Publication of "Changes Without Regulatory Effect"
120. Publication Date and Submission of Notice for Approval and Publication

Section 4. "Plain English" requirements.

(a) The notice of proposed adoption or amendment of a regulation shall include a determination as to whether or not the adoption or amendment affects small business. For purposes of this section, an adoption or amendment affects small business if a small business within the meaning of Government Code section 11342 (h):

(1) Is legally required to comply with the regulation;

(2) Is legally required to enforce the regulation;

(3) Derives a benefit from the enforcement of the regulation; or

(4) Incurs a detriment from the enforcement of the regulation.

(b) If the notice of proposed adoption or amendment states that the adoption or amendment affects small business, the rulemaking agency shall:

(1) Place in the notice of proposed action:

(A) 1. A concise plain English policy statement overview regarding each proposed regulation that explains the broad objectives of the proposed regulation; and

2. If appropriate, the specific objectives of the proposed regulation.

(B) Either of the following statements, as appropriate:

1. "The express terms of the proposed action written in plain English are available from the agency contact person named in this notice."

2. "[The rulemaking agency] has determined that it is not feasible to draft the regulation[s] in plain English due to the technical nature of the regulation[s]; however, a noncontrolling plain English summary of the regulation[s] is available from the agency contact person named in this notice."

(2) Prepare and submit to OAL with the notice of proposed action either:

(A) The express terms of the proposed action, pursuant to Government Code section 11346.2(a), written in plain English pursuant to Government Code sections 11342(e) and 11346.2(a)(1) or

(B) If it is not feasible to draft the regulation in plain English due to the technical nature of the regulation, a noncontrolling plain English summary of the regulation.

(c) If an agency determines that the regulation does not affect small business, the agency shall include in the notice of proposed action a brief explanation of the reason(s) for the agency's determination.

(d) Every agency that determines that the adoption or amendment of a regulation affects small business shall include in the rulemaking file either:

(1) A statement confirming that the agency has drafted the regulation in plain English; or

(2)(A) A statement confirming that the agency determined that it was not feasible to draft the regulation in plain English; and

(B) A noncontrolling plain English summary of the regulation.

NOTE: Authority: Government Code sections 11342.4, 11349.1(c).
Reference: Government Code sections 11340, 11342(e), 11346.2(a)(1), 11346.5(a)(3)(B), 11347.3.
HISTORY:

1. New section filed 6/22/94; effective upon filing pursuant to Government Code section 11346.2(d).

2. Change without regulatory effect pursuant to Section 100, Title 1, California Code of Regulations substituting "11342(h)" for "11342(e)" in subsection (a); "11346.2(a)" for "11346.7(a)," "11342(e)" for "11342(f)," and "11346.2(a)(1)" for "11343.2(b)" in subsection (b)(2)(A); "11342(e)" for "11342(f)" and "11346.2(a)(1)" for "11343.2(b)" in subsection (d)(1); and substituting "11342(e)" for "11342(f)," deleting "11343.2," adding "11346.2(a)(1), substituting "11346.5(a)(3)(B)" for "11346.5," and deleting "11346.7" in the reference citation under "NOTE." Filed 1-3-95; operative upon filing (Reg. 95, No. 1).

3. Amendment of subsection (d)(1) filed 1-8-99; operative 2-7-99 (Register 99, No. 2).

Section 5. Submission of Notices for Publication (Form 400).

(a) Each Friday is designated as the publication date of the California Regulatory Notice Register.

(b) At least ten calendar days before the desired publication date of any notice, an agency shall submit the following to OAL:

(1) four copies of the notice with a Form 400 (see Appendix A to this Article), or copy thereof, with Part A completed, attached to the front of two of the copies of the notice, and,

(2) if the notice is a notice of proposed regulatory action submitted pursuant to Government Code section 11346.4(a)(5), the submission shall also include a copy of each document required by Government Code section 11346.2(a).

(c) The Form 400 attached to the notice as provided in subsection (b), above, shall contain:

(1) a description of the subject matter of the notice and, if the notice is a notice of proposed regulatory action, the title(s) of the California Code of Regulations affected, with the first affected regulation section number listed;

(2) the requested publication date;

(3) the type of notice;

(4) the name of the submitting agency and the agency file number, if any, as well as the name and telephone number of an agency contact person for the notice submission;

(5) if the notice is a notice of proposed regulatory action submitted after an emergency filing, the agency shall enter the number assigned by OAL to the emergency filing in the box marked “All Previous Related

OAL Regulatory Action Number(s)" (box 1b. of Part B); and

(6) if the notice is a notice of proposed regulatory action submitted after the readoption of an emergency filing, the agency shall enter the number assigned by OAL to the readoption of the emergency filing and the number assigned by OAL to the original emergency filing in the box marked "All Previous Related OAL Regulatory Action Number(s)" (box 1b. of Part B).

(d) Except for the types of notices described below in this subsection, the agency shall pay a notice printing fee to OAL in the amount of $40.00 per page, or any portion thereof, as printed in the California Regulatory Notice Register:

(1) a notice of proposed regulatory action submitted pursuant to Government Code Section 11346.4(a)(5);

(2) a notice otherwise required by statute to be published in the California Regulatory Notice Register; or,

(3) a notice modifying information contained in a notice described in subsections (d)(1) or (d)(2) above.

(e) If a notice of proposed regulatory action fails to comply with the requirements of this Article or Sections 11346.3, 11346.4(a)(5), and 11346.5 of the Government Code, OAL shall contact the agency within three business days to correct any deficiencies. If the deficiencies are not corrected by agreement between OAL and the agency within the three-day period, OAL shall promptly return the notice to the agency with a letter explaining the reasons for disapproval.

NOTE: Authority cited: Section 11342.4, Government Code. Reference: Sections 11344.1, 11346.2, 11346.3, 11346.4, and 11346.5, Government Code.
HISTORY:

(2) the title(s) of the California Code of Regulations affected and a list of all

1. Renumbering and amendment of former section 120 as section 5 filed 6-26-90; operative 7-25-90 (Register 90, No.35).

2. Change without regulatory effect pursuant to Section 100, Title 1, California Code of Regulations substituting "11346.2(a)" for "11346.7(a)" in subsection (b)(2); adding "11346.3," the word "and," and deleting "and 11346.53" in subsection (e); and adding "11346.2," "11346.3," the word "and," and deleting "11346.53, and 11346.7," in the reference citation under "NOTE." Filed 1-3-95; operative upon filing (Reg. 95, No. 1).

3. Change without regulatory effect pursuant to Section 100, Title 1, California Code of Regulations substituting "11346.2(a)" for "11346.7(a)" in subsection (b)(2); adding "11346.3," the word "and," and deleting "and 11346.53" in subsection (e); and adding "11346.2," "11346.3," the word "and," and deleting "11346.53, and 11346.7," in the reference citation under "NOTE." Filed 1-3-95; operative upon filing (Register 95, No. 1).

4. Change without regulatory effect amending subsections (c)(5) and (c)(6) filed 4-19-99 pursuant to Section 100, title 1, California Code of Regulations (Register 99, No.).

Section 6. Submission of Regulatory Actions (Form 400).

(a) All regulatory actions submitted to OAL for publication in the California Code of Regulations and/or for transmittal to the Secretary of State for filing--including, but not limited to, the types of regulatory actions specified in subsection (b)(3) of this section--shall include seven copies of the regulation(s). A completed Form 400 (see Appendix A to this Article) with the original signature of the person making the certification referred to in subsection (b)(8) of this section shall be attached to the front of one of the copies of the regulation(s). A copy of this Form 400 shall be attached to each of the remaining six copies of the regulation(s) submitted to OAL.

(b) The completed Form 400 attached to the regulation(s) submitted to OAL shall contain:

(1) Subject of Regulation(s): regulation sections being adopted, amended or repealed;

(3) the type of regulatory filing:

(A) Regular rulemaking (Gov. Code, secs. 11346 and 11349.1);

(B) Resubmittal of regulatory actions (Gov. Code, secs. 11346.1, 11349.3, and 11349.4);

(C) Changes without regulatory effect (Cal. Code Regs., tit. 1, sec. 100);

(D) Emergency (Government Code, sections 11346.1 and 11349.6);

(E) Certificate of compliance (Government Code, section 11346.1(e)).

(F) "Print Only" requests for:

1. regulations adopted pursuant to the requirements of the APA, but which are expressly exempted by statute from OAL review; or

2. regulations not required to be printed in the California Code of Regulations, but which the adopting agency desires to have printed pursuant to Government Code Section 11343.8;

(G) Other (i.e., not listed in subsections (A) through (F), above) describing the nature of the filing;

(4) the beginning and ending dates of all public availability periods pursuant to sections 44 and 45 of this Article;

(5) the requested effective date of regulatory changes (Gov. Code, sec. 11343.4);

(6) if a statute requires that, prior to submitting the regulatory action to OAL, the rulemaking agency provide notice to another agency or entity of the regulatory action, or otherwise to submit the regulations to another agency or entity for review, consultation, approval, or concurrence, at any time prior to the submission of the regulations to OAL, the name of any and all such agencies or entities;

(7) the name and telephone number of an agency contact person for the regulatory action;

(8) a signed certification by an agency official authorized to make the certification stating:

(A) that the attached copy of the regulation is a true and correct copy of the regulation identified on the Form 400;

(B) that the information specified on the Form 400 is true and correct;

(C) that the person signing the certification is the head of the agency, or a designee of the agency head, authorized to make the certification;

(D) the date the certification is made; and,

(E) the typed name and title of the person making the certification;

(9) the file number(s) previously assigned by OAL:

(A) to the submission of the notice of proposed regulatory action (the "Notice File Number");

(B) to the prior submission(s) of the regulatory action (the "Regulatory Action Number") if the present filing is the resubmission of a disapproved or withdrawn regulatory action (place this file number in the box marked “All Previous Related OAL Regulatory Action Number(s)”);

(C) to the submission of the original emergency regulatory action (the "Emergency Number") if the present filing is a certificate of compliance or a readoption of the emergency regulatory action (place this file number in the box marked “All Previous Related OAL Regulatory Action Number(s)”); "All Previous Related OAL Regulatory Action Numbers") if the present filing is a certificate of compliance after the readoption of an emergency regulatory action;

(D) to the submission of the readoption of the emergency regulatory action (the "Emergency Number") and to the submission of the original emergency regulatory action (place these file numbers in the box marked

(10) if not already completed, the name of the agency with rulemaking authority and the agency's file number, if any.

(c) All regulatory actions submitted to OAL for publication in the California Code of Regulations and/or transmittal to the Secretary of State for filing shall include the Form 400, which shall be completed as follows:

(1) when submitting regulations as a "regular rulemaking," complete part B of the same Form 400 that was previously submitted with the notice of the proposed regulatory action, or, if a new Form 400 is used, complete part B and enter the number OAL previously assigned to the notice in the box marked "Notice File Number."

(A) When adoptions, amendments, or repeals described in one notice of regulatory action are later submitted to OAL for review in more than one regulatory filing, the agency shall, at the time of submission to OAL, either

l. complete part B of a photocopy of the Form 400 submitted with the notice, or

2. complete part B of a new Form 400 and enter the number OAL previously assigned to the notice in the box marked "Notice File Number."

(2) when resubmitting a disapproved or withdrawn regulatory filing, complete part B of a new Form 400, and enter the number OAL previously assigned to the notice in the box marked "Notice File Number" and enter the number OAL previously assigned to the prior submission of the regulatory action in the box marked "All Previous Related OAL Regulatory Action Number(s)."

(3) when submitting emergency regulations, complete part B of the Form 400.

(4) when submitting a Certificate of Compliance filing after the adoption of emergency regulations, complete part B of the Form 400 that was previously submitted with the notice, or, if a new Form 400 is used, enter the number OAL previously assigned to the notice in the box marked "Notice File Number" and enter the number OAL previously assigned to the original emergency filing in the box marked "All Previous Related OAL Regulatory Action Number(s)."

(5) when submitting a Certificate of Compliance filing after the readoption of emergency regulations, complete part B of the Form 400 that was previously submitted with the notice, or, if a new Form 400 is used, enter the number OAL previously assigned to the notice in the box marked "Notice File Number," and enter the numbers OAL previously assigned to the readoption of the emergency filing and the original emergency filing in the box marked "All Previous Related OAL Regulatory Action Number(s)."

(6) when submitting previously approved emergency regulations for readoption, complete part B of a new Form 400, and enter the number OAL assigned to the original emergency filing in the box marked "All Previous Related OAL Regulatory Action Number(s)."

NOTE: Authority cited: Section 11342.4, Government Code. Reference: Sections 11343, 11343.1, 11343.8, 11346.1 and 11347.3, Government Code.

HISTORY:

1. New section filed 6-26-90; operative 7-25-90 (Register 90, No. 35).

2. Change without regulatory effect, pursuant to Section 100, Title 1, California Code of Regulations, substituting "11343.4" for "11346.2" in subsection (b)(4). Filed 1-3-95; operative upon filing (Reg. 95, No. 1).

3. Amendment of subsection (a), new subsection (b)(1), subsection renumbering, and amendment of newly designated subsections (b)(9)(B)-(D) filed 1-8-99; operative 2-7-99 (Register 99, No. 2).

4. Editorial correction of printing error in subsections (b)(3)(A),(B),(C),(D),(E), (b)(5) and (b)(9)(C) and (D) (Register 99, No.).

5. Change without regulatory effect amending subsections (b)(3)(A) and (B), (b)(9)(B),(C) and ,(D), (b)(10), (c)(2) and (c)(4)-(c)(6) filed 4-19-99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No.).

Section 7. Marking File Numbers on Documents Submitted to OAL.

The number assigned by OAL to a proposed regulatory action ("Regulatory Action Number") shall be included by the agency in all subsequent documents submitted to OAL concerning that particular regulatory action.

NOTE: Authority cited: Sections 11342.4 and 11349.1(c), Government Code. Reference: Sections 11343.1 and 11349.1(c), Government Code.
HISTORY:
1. New section filed 6-26-90; operative 7-25-90 (Register 90, No.35).

Section 8. Final Text; Underline and Strikeout

(a) For the purposes of this section;
(1) the term “regulation” includes authority and reference citations; and
(2) the term “final text” means the certified copy of the regulation or order of repeal transmitted to OAL for filing with the Secretary of State and the six copies required by Government Code section 11343.
(b) The final text of the regulation shall use underline or italic to accurately indicate additions to, and strikeout to accurately indicate deletions from, the California Code of Regulations. Underline or italic is not required for the adoption of a new regulation or set of regulations if the final text otherwise clearly indicates that all of the final text submitted to OAL for filing is added to the California Code of Regulations.

NOTE: Authority cited: Sections 11342.4 and 11349.1(c), Government Code. Reference: Sections 11340.1, 11346.2(b), 11349(a), 11349.1(a)(1) and (c), Government Code.
HISTORY:

NOTE: Authority cited: Sections 11342.4 and 11349.1(c), Government Code. Reference: Sections 11343, 11343.1, and 11346.1, Government Code.
HISTORY:
1. New section filed 1-8-99; operative 2-7-99 (Register 99, No. 2).

Section 10. "Necessity."

(a) In reviewing the rulemaking record for compliance with subsection (b), OAL shall not dispute the decision of a rulemaking agency to adopt a particular regulatory provision when the information provided as required by subsection (b) is also adequate to support one or more alternative conclusions.
(b) In order to meet the "necessity" standard of Government Code section 11349.1, the record of the rulemaking proceeding shall include:
(1) a description of the public problem, administrative requirement, or other condition or circumstance which each provision of the regulation is intended to address; and
(2) information explaining why each provision of the adopted regulation is required to carry out the described purpose of the provision. Such information shall include, but is not limited to, facts, studies, or expert opinion. When the explanation is based upon policies, conclusions, speculation, or conjecture, the rulemaking record must include, in addition, supporting facts, studies, expert opinion, or other information. An "expert" within the meaning of this section is a person who possesses special skill or knowledge by reason of study or experience which is relevant to the regulation in question.
1. New section filed 1-2-86; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 86, No. 1).
2. Change without regulatory effect pursuant to Section 100, Title 1, California Code of Regulations adding

quotation marks around "Necessity" in the section heading; substituting "as required by" for "for in" in the text; and substituting "11349.1(c)" for "11349.(b)" in both the "Authority cited" and the "Reference" portions of the NOTE filed 1-5-89; operative 1-5-89 (Register 89, No. 3).

3. Editorial correction of HISTORY No. 2 (Register 89, No. 12).

4. Change without regulatory effect pursuant to Section 100, Title 1, California Code of Regulations substituting "OAL" for "the Office of Administrative Law" in subsection (a) filed 7-2-90; operative 7-25-90 (Register 90, No.35).

5. Change without regulatory effect pursuant to Section 100, Title 1, California Code of Regulations, substituting "11346.2(b)" for "11346.7(a)" in the reference citation under "NOTE." Filed 1-3-95; operative upon filing (Reg. 95, No. 1).

Section 11. "Necessity" in the Context of Mandated Regulations.

When an agency adopts a regulation which is identical to another statute, regulation, or standard, the "necessity" standard of Government Code Section 11349.1 shall be met if the record demonstrates that the specific provisions adopted in the regulation are mandated by a California statute or other applicable law. However, when an agency adopts a provision of a regulation that is not mandated by the specific enabling statute or law, the record shall include the information required by Section 10(b) for each such provision of the regulation.

(1) The proposed regulation duplicates or overlaps a state or federal statute or regulation which is cited as "authority" or "reference" for the proposed regulation and the duplication or overlap is necessary to satisfy the "clarity" standard of Government Code Section 11349.1(a)(3). Justification for such duplication shall be provided by inclusion of facts, explanations, expert opinions or other information in the rulemaking record which establish that the overlap or duplication is necessary in order for the regulation to satisfy

NOTE: Authority cited: Sections 11342.4 and 11349.1(c), Government Code. Reference: Sections 11346.9(c), 11349(a) and 11349.1(a)(1), Government Code.
HISTORY:

1. New section filed 1-2-86; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 86, No. 1).

2. Change without regulatory effect pursuant to Section 100, Title 1, California Code of Regulations adding quotation marks around "Necessity" in the section heading and substituting "11349.1(c)" for "11349.1(b)" in the NOTE filed 1-5-89; operative 1-5-89 (Register 89, No. 3).

3. Editorial correction of HISTORY No. 2 (Register 89, No. 12).

4. Change without regulatory effect pursuant to Section 100, Title 1, California Code of Regulations, substituting "11346.9(c)" for "11346.7(d)" in the reference citation under "NOTE." Filed 1-3-95; operative upon filing (Reg. 95, No. 1).

Section 12. "Nonduplication."

(a) A regulation shall "serve the same purpose," as that term is used in Government Code Section 11349(f), where it either repeats or rephrases in whole or in part a state or federal statute or regulation.

(b) A regulation which duplicates a state or federal statute or regulation shall, nonetheless, meet the "nonduplication" standard of Government Code Section 11349.1 if any one of the following conditions is met:

the requirements of Government Code Section 11349.1(a)(3); or

(2) The agency meets the requirement of Government Code Section 11346.9(c) when adopting or amending federally mandated regulations; or

(3) The duplication is mandated or authorized by a specified statute or other provision of law. The agency shall include a statement in its rulemaking record which:

(A) identifies the state or federal statute(s) or regulation(s) which the regulation under review overlaps or duplicates, and

(B) identifies the provision of law which mandates or permits the overlap or duplication. This statement shall set forth the applicable provision of law in a citation style which clearly identifies the statute or regulation and provides information necessary to locate the full text of the statute or regulation.

NOTE: Authority cited: Section 11349.1(c), Government Code. Reference: Sections 11346.2, 11346.9, 11349(f) and 11349.1(a)(6), Government Code.
HISTORY:

1. New section filed 1-2-86; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 86, No. 1).
2. Change without regulatory effect pursuant to Section 100, Title 1, California Code of Regulations adding quotation marks around "Nonduplication" in the section heading and substituting "11349.1(c)" for "11349.1(b)" in the NOTE filed 1-5-89; operative 1-5-89 (Register 89, No. 3).
3. Editorial correction of HISTORY No. 2 (Register 89, No. 12).
4. Change without regulatory effect, pursuant to Section 100, Title 1, California Code of Regulations, substituting "11346.9(c)" for "11346.7(d)" in subsection (b)(2); substituting "11346.2" for "11346.7(a) and (b)," and adding "11346.9" in the reference citation under "NOTE." Filed 1-3-95; operative upon filing (Reg. 95, No. 1).

Section 14. "Authority" and "Reference."

In reviewing a regulation for compliance with the "authority" and "reference"

(1) For purposes of this analysis, an agency's interpretation of its regulatory power, as indicated by the proposed citations to "authority" or "reference" or any supporting documents contained in the rulemaking record, shall be conclusive unless:

(A) the agency's interpretation alters, amends or enlarges the scope of the power conferred upon it; or

(B) a public comment challenges the agency's "authority"; or

(C) a judicial interpretation of a provision of law cited as "authority" or "reference" contradicts the agency's interpretation.

(2) In the absence of an appellate court decision to the contrary, OAL shall presume the constitutionality of the statutes cited by an agency as "authority" or "reference."

requirements of Government Code Section 11349.1, OAL shall apply the following standards and presumptions:

(a) *Sources of "Authority."* "Authority" shall be presumed to exist only if an agency cites in its "authority" note proposed for printing in the California Code of Regulations:

(1) a California constitutional or statutory provision which expressly permits or obligates the agency to adopt, amend, or repeal the regulation; or

(2) a California constitutional or statutory provision that grants a power to the agency which impliedly permits or obligates the agency to adopt, amend, or repeal the regulation in order to achieve the purpose for which the power was granted.

(b) *Sources of "Reference."* "Reference" shall be presumed to exist if an agency is empowered to implement, interpret or make specific a:

(1) California constitutional provision; or

(2) California statute; or

(3) federal statute or regulation; or

(4) court decision or order, cited in its "reference" note proposed for printing in the California Code of Regulations.

(c) *Review of "Notes."* In reviewing "notes," OAL shall use the same analytical approach employed by the California Supreme Court and the California Court of Appeal, as evidenced in published opinions of those courts.

(d) *Citations*. Citations of "authority" and "reference" for each regulatory section which has been adopted or amended and submitted to OAL for filing with the Secretary of State shall appear at the end of each section. Court decisions relied upon by the agency as support for the citations may also be cited at the end of each respective section.

NOTE: Authority cited: Sections 11342.4 and 11349.1(c), Government Code. Reference: Sections 11344(d) and 11349(b) and (e), Government Code; Cal. Const. Art.3, Section 3.5; *Rivera v. City of Fresno* (1971) 6 Cal.3d 132, 98 Cal.Rptr. 281; *First Industrial Loan v. Daugherty* (1945) 26 Cal.2d 545; *Whitcomb Hotel, Inc. v. Cal. Emp. Com.* (1944) 24 Cal.2d 753; *Cal. Drive-In Restaurant Assn. v. Clark* (1943) 22 Cal.2d 287; *Boone v. Kingsbury* (1928) 206 Cal. 148; *Bank of Italy v. Johnson* (1926) 200 Cal. 1; *Hodge v. McCall* (1921) 185 Cal. 330; *Pope v. Bd. of Equalization of State of Cal.* (1983) 146 Cal.App.3d 1132, 194 Cal.Rptr. 883; *Rich Vision Centers, Inc. v. Board of Medical Examiners* (1983) 144 Cal.App.3d 112, 192 Cal.Rptr. 455.

HISTORY:

1. New section filed 1-2-86; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 86, No. 1).
2. Change without regulatory effect pursuant to Section 100, Title 1, California Code of Regulations adding quotation marks around "Authority" and "Reference" in the section heading; substituting "California Code of Regulations" for "California Administrative Code" in subsections (a) and (b)(4); and substituting "11349.1(c)" for "11349.1(b)" and adding case names and California Reporter references in the NOTE filed 1-5-89; operative 1-5-89 (Register 89, No. 3).
3. Editorial correction of HISTORY No. 2 (Register 89, No. 12).
4. Change without regulatory effect pursuant to Section 100, Title 1, California Code of Regulations substituting "OAL" for "the Office of Administrative Law" in first sentence; substituting "OAL" for "the office" in subsections (c), (c)(2) and (d); and, substituting "respective" for "relevant" in subsection (d), filed 7-2-90; operative 7-25-90 (Register 90, No.35).
5. Change without regulatory effect pursuant to Section 100, Title 1, California Code of Regulations, deleting "11343.1(b)," and adding "(b) and" after "11349" in the reference citation under "NOTE." Filed 1-3-95; operative upon filing (Reg. 95, No. 1).

Section 16. "Clarity."

In examining a regulation for compliance with the "clarity" requirement of Government Code section 11349.1, OAL shall apply the following standards and presumptions:

(a) A regulation shall be presumed not to comply with the "clarity" standard if any of the following conditions exists:

(1) the regulation can, on its face, be reasonably and logically interpreted to have more than one meaning; or

(2) the language of the regulation conflicts with the agency's description of the effect of the regulation; or

(3) the regulation uses terms which do not have meanings generally familiar to those "directly affected" by the regulation, and those terms are defined neither in the regulation nor in the governing statute; or

(4) the regulation uses language incorrectly. This includes, but is not limited to, incorrect spelling, grammar or punctuation; or

(5) the regulation presents information in a format that is not readily understandable by persons "directly affected;" or

(6) the regulation does not use citation styles which clearly identify published material cited in the regulation.

(b) Persons shall be presumed to be "directly affected" if they:

(1) are legally required to comply with the regulation; or

(2) are legally required to enforce the regulation; or

(3) derive from the enforcement of the regulation a benefit that is not common to the public in general; or

(4) incur from the enforcement of the regulation a detriment that is not common to the public in general.

NOTE: Authority cited: Sections 11342.4 and 11349.1(c), Government Code. Reference: Section 11349(c), Government Code.
HISTORY:

1. New section filed 1-2-86; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 86, No. 1).
2. Change without regulatory effect pursuant to Section 100, Title 1, California Code of Regulations adding quotation marks around "Clarity" in the section heading and adding "and (c)" after "11349.1(b)" in the NOTE filed 1-5-89; operative 1-5-89 (Register 89, No. 3).
3. Editorial correction of HISTORY No. 2 (Register 89, No. 12).
4. Change without regulatory effect pursuant to Section 100, Title 1, California Code of Regulations substituting "OAL" for "the Office of Administrative Law" in first sentence filed 7-2-90; operative 7-25-90 (Register 90, No.35).
5. Change without regulatory effect pursuant to Section 100, Title 1, California Code of Regulations deleting "(b) and" after "11349.1" in the authority citation under "NOTE." Filed 1-3-95; operative upon filing (Reg. 95, No. 1).
6. Amendment of subsection (a)(1) filed 1-8-99; operative 2-7-99 (Register 99, No. 2).

Section 20. "Incorporation by Reference."

(a) "Incorporation by reference" means the method whereby a regulation printed in the California Code of Regulations makes provisions of another document part of that regulation by reference to the other document.

(3) The informative digest in the notice of proposed action clearly identifies the document to be incorporated by title and date of publication or issuance. If, in accordance with Government Code Section 11346.8(c), the agency changes the originally proposed regulatory action or informative digest to include the incorporation of a document by reference, the document shall be clearly identified by title and date of publication or issuance in the notice required by Section 44 of these regulations.

(b) Material proposed for "incorporation by reference" shall be reviewed in accordance with procedures and standards for a regulation published in the California Code of Regulations. Except as otherwise specified in Section 11 of these regulations, OAL shall not review material proposed for "incorporation by reference" for compliance with the applicable standards of Government Code Section 11349.1 when a California statute or other applicable law specifically requires the adoption or enforcement of the incorporated material by the rulemaking agency.

(c) An agency may "incorporate by reference" only if the following conditions are met:

(1) The agency demonstrates in the final statement of reasons that it would be cumbersome, unduly expensive, or otherwise impractical to publish the document in the California Code of Regulations.

(2) The agency demonstrates in the final statement of reasons that the document was made available upon request directly from the agency, or was reasonably available to the affected public from a commonly known or specified source. In cases where the document was not available from a commonly known source and could not be obtained from the agency, the regulation shall specify how a copy of the document may be obtained.

(4) The regulation text states that the document is incorporated by reference and identifies the document by title and date of publication or issuance. Where an authorizing California statute or other applicable law requires the adoption or enforcement of the incorporated provisions of the document as well as any subsequent amendments thereto, no specific date is required.

(5) The regulation text specifies which portions of the document are being incorporated by reference.

(d) If the document is a formal publication reasonably available from a commonly known or identified source, the agency need not provide six duplicate copies of the document under Government Code Section 11343(c).

(e) Where a regulation which incorporates a document by reference is approved by OAL and filed with the Secretary of State, the document so incorporated shall be deemed to be a regulation subject to all provisions of the APA.

NOTE: Authority cited: Section 11342.4, Government Code. Reference: Sections 11343(c), 11344(c), 11344.6, 11346.2, 11346.4, 11346.5, and 11346.8(c), Government Code.
HISTORY:

1. New section filed 1-2-86; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 86, No. 1).
2. Change without regulatory effect pursuant to Section 100, Title 1, California Code of Regulations adding quotation marks around "Incorporation by Reference" in the section heading; substituting "California Code of Regulations" for "California Administrative Code" in subsections (a), (b), and (c)(1); and substituting "11344(c)" for "11344(e)" and adding "11344.6" in the NOTE filed 1-5-89; operative 1-5-89 (Register 89, No. 3).
3. Editorial correction of HISTORY No. 2 (Register 89, No. 12).
4. Change without regulatory effect pursuant to Section 100, Title 1, California Code of Regulations substituting "OAL" for "the Office of Administrative Law" in subsection (b); substituting "the" for "The" at the beginning of subsections (c)(1), (c)(2), (c)(3), (c)(4), and (c)(5); substituting "OAL" for "the Office" in subsection (e); substituting "APA" for "Administrative Procedure Act, Chapter 3.5, Part 1, Division 3, Title 2 of the Government Code" in subsection (e), filed 7-2-90; operative 7-25-90 (Register 90, No.35).

Changes to the original text of a regulation shall be deemed to be "sufficiently related," as that term is used in Government Code Section 11346.8, if a reasonable member of the directly affected public could have determined from the notice that these changes to the regulation could have resulted.

NOTE: Authority cited: Sections 11342.4 and 11349.1(c), Government Code. Reference: Section 11346.8(c), Government Code.

5. Change without regulatory effect pursuant to Section 100, Title 1, California Code of Regulations adding "11346.2" and deleting "11346.7(d)" in the reference citation under "NOTE." Filed 1-3-95; operative upon filing (Reg. 95, No. 1).

Section 40. "Nonsubstantial Changes."

Changes to the original text of a regulation shall be deemed to be "nonsubstantial," as that term is used in Government Code Section 11346.8, if they clarify without materially altering the requirements, rights, responsibilities, conditions, or prescriptions contained in the original text.

NOTE: Authority cited: Sections 11342.4 and 11349.1(c), Government Code. Reference: Section 11346.8(c), Government Code.
HISTORY:

1. New section filed 1-2-86; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 86, No. 1).
2. Change without regulatory effect pursuant to Section 100, Title 1, California Code of Regulations adding quotation marks around "Nonsubstantial Changes" in the section heading and substituting "11349.1(c)" for "11349.1" in the NOTE filed 1-5-89; operative 1-5-89 (Register 89, No. 3).
3. Editorial correction of HISTORY No. 2 (Register 89, No. 12).

Section 42. "Sufficiently Related" Changes.

HISTORY:

1. New section filed 1-2-86; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 86, No. 1).
2. Change without regulatory effect pursuant to Section 100, Title 1, California Code of Regulations adding quotation marks around "Sufficiently Related" in the section heading and substituting "11349.1(c)" for "11349.1(b)" in the NOTE filed 1-5-89; operative 1-5-89 (Register 89, No. 3).
3. Editorial correction of HISTORY No. 2 (Register 89, No. 12).

Section 44. Public Availability of Changes to Regulations.

(a) At least 15 calendar days prior to the adoption of a change to a regulation required to be made available to the public by Government Code Section 11346.8(c), the rulemaking agency shall mail a notice stating the period within which comments will be received together with a copy of the full text of the regulation as originally proposed, with the proposed change clearly indicated, to the following:

(1) all persons who testified at the public hearing; and

(2) all persons who submitted written comments at the public hearing; and

(3) all persons whose comments were received by the agency during the public comment period; and

(4) all persons who requested notification from the agency of the availability of such changes.

(b) The rulemaking record shall contain a statement confirming that the agency complied with the requirements of this section and stating the date upon which the notice and text were mailed and the beginning and ending dates for this public availability period.

(c) If there were no persons in the categories listed in subsections (a)(1) through (a)(4), then the rulemaking record shall contain a confirming statement to that effect.

(d) Whether or not a mailing is required by subsection (a), the agency shall make the notice and text available to the public for at least 15 days at the location where the rulemaking record is maintained, and the confirming statement shall contain the beginning and ending dates for this public availability period.

NOTE: Authority cited: Sections 11342.4 and 11349.1(c), Government Code. Reference: Sections 11346.8(c) and 11347.3(a)(9), Government Code.

HISTORY:

1. New section filed 1-2-86; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 86, No. 1).

2. Change without regulatory effect pursuant to Section 100, Title 1, California Code of Regulations substituting "11349.1(c)" for "11349.1(b)" in the NOTE filed 1-5-89; operative 1-5-89 (Register 89, No. 3).

3. Editorial correction of HISTORY No. 2 (Register 89, No. 12).

4. Amendment adding "and the beginning and ending dates for this public availability period" in subsection (b) and adoption of new subsections (c) and (d) filed 6-26-90; operative 7-25-90 (Register 90, No.35).

Section 45. 15-Day Public Availability of Supporting Documents and Information.

(a) A notice shall be deemed to comply with the requirements in Government Code Sections 11346.9(a)(1) and 11346.8(d) that certain documents and information be made available for public comment when:

(1) the notice contains a list specifically describing the documents and information, and states where and when they are available for public inspection; and

(2) at least 15 calendar days prior to the adoption or amendment of a resulting regulation, the rulemaking agency mails a copy of the notice to the persons described in Section 44.

(b) The documents and information shall be available for public inspection at the location described in the notice for at least 15 calendar days prior to the adoption of the resulting regulation.

(c) Any written comments regarding the documents or information received by the agency during the availability period shall be summarized and responded to in the final

statement of reasons as specified in Government Code Section 11346.9(a)(3).

(d) The rulemaking record shall contain a statement confirming that the agency complied with the requirements of subsection (a) and stating the date upon which the notice was mailed.

NOTE: Authority cited: Sections 11342.4 and 11349.1(c), Government Code. Reference: Sections 11346.8(d) and 11346.9(a)(1) and (3), Government Code.
HISTORY:

1. New section filed 1-2-86; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 86, No. 1).
2. Change without regulatory effect pursuant to Section 100, Title 1, California Code of Regulations substituting "11349.1(c)" for "11349.1(b)" in the NOTE filed 1-5-89; operative 1-5-89 (Register 89, No. 3).
3. Editorial correction of HISTORY No. 2 (Register 89, No. 12).
4. Change without regulatory effect pursuant to Section 100, Title 1, California Code of Regulations substituting "15-Day" for "15 Day" in the caption filed 7-2-90; operative 7-25-90 (Register 90, No.35).
5. Change without regulatory effect pursuant to Section 100, Title 1, California Code of Regulations substituting "11346.9(a)(1)" for "11346.7(b)(1)" in subsection (a); "11346.9(a)(3)" for "11346.7(b)(3)" in subsection (c); and deleting "11346.7(b)(1), 11346.7(b)(3) and" and adding "and 11346.9(a)(1) and (3)" in the reference citation under "NOTE." Filed 1-3-95; operative upon filing (Reg. 95, No. 1).

Section 46. "Clearly Indicated" Changes.

(a) Changes to regulations in accordance with Government Code Section 11346.8(c) shall be made using a uniform method and shall illustrate accurately all changes to the original text.

(b) Methods for illustrating such changes may include but are not limited to the following:

(1) annotations which specify the added or deleted language; or

(2) footnotes which specify the added or deleted language; or

(3) double strikeout and double underline; or

(4) for changes to newly proposed text, strikeout and double underline or strikeout and italics.

(c) A written description of the method used shall appear as the first page of the changed text.

NOTE: Authority cited: Sections 11342.4 and 11349.1(c), Government Code. Reference: Section 11346.8(c), Government Code.
HISTORY:

1. New section filed 1-2-86; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 86, No. 1).
2. Change without regulatory effect pursuant to Section 100, Title 1, California Code of Regulations adding quotation marks around "Clearly Indicated" in the section heading and substituting "11349.1(c)" for "11349.1(b)" in the NOTE filed 1-5-89; operative 1-5-89 (Register 89, No. 3).
3. Editorial correction of HISTORY No. 2 (Register 89, No. 12).

Section 55. OAL Review of Public Comments.

(a) OAL shall consider comments submitted directly to OAL by the public only in connection with emergency regulation reviews, including the review of an emergency regulation proposed to be readopted. OAL shall not consider comments submitted directly to OAL by the public when OAL is reviewing:

(1) certificate of compliance regulation filings under Government Code sections 11346.1(e) and 11349.6(d); or

(2) non-emergency regulation filings under Government Code section 11349.3.

(b) In reviewing emergency regulations pursuant to Government Code section 11349.6(b), OAL shall consider comments

received from the public concerning the proposed emergency adoption, amendment, or repeal, including comments regarding the finding of emergency, when all of the following conditions are met:

(1) The comments are submitted to OAL in writing;

(2) The comments are received by OAL prior to the time OAL makes its decision regarding the approval or disapproval of the regulations and within five calendar days after the receipt of the regulations by OAL;

(3) The comments contain a notation that they are submitted to OAL for consideration in connection with an emergency regulation review and identify the topic of the emergency regulations to which they relate; and

(4) A written statement accompanying the comments submitted to OAL confirms that a copy of the comments has been transmitted to the rulemaking agency's contact person for the emergency regulation filing, as designated by the rulemaking agency on the Form 400.

(c) OAL shall not consider comments concerning emergency regulations unless the comments meet all of the conditions specified in subsections (b)(1) through (4). When OAL receives comments concerning emergency regulations which do not meet all of these conditions, OAL shall return the comments to the commenter without considering the comments.

(d) Any person who submits comments concerning emergency regulations to OAL shall first transmit a complete copy of the comments to the rulemaking agency's contact person for the emergency regulation filing as designated by the rulemaking agency on the Form 400.

(e) OAL shall provide any person interested in submitting comments concerning emergency regulations with the name, address, and telephone number of the rulemaking agency's contact person for the emergency regulation filing as designated by the rulemaking agency on the Form 400.

(f) When OAL receives comments concerning emergency regulations which meet the conditions for consideration set forth in subsections (b)(1) through (4), OAL shall telephone the rulemaking agency within one working day after the receipt of the comments to confirm that the comments are being considered by OAL. OAL shall inform the rulemaking agency at that time that the agency has the opportunity to rebut or otherwise respond to the comments.

(g)(1) Except as provided in subsections (2) and (3), OAL shall consider rulemaking agency rebuttals or responses to comments concerning emergency regulations if, and only if, they are submitted to OAL in writing and are received by OAL within eight calendar days after the receipt of the regulations.

(2) If the eighth calendar day falls on a Saturday, then the agency rebuttal or response is due on the seventh calendar day.

(3) If there are one or more state holidays between the fifth calendar day and the eighth calendar day after the regulations were filed with OAL, then the agency rebuttal or response is due on the ninth day. However, if that ninth calendar day falls on a Saturday, Sunday, or a state holiday, the agency's rebuttal or response is due by 10:00 a.m. of the last day the regulation must be reviewed by OAL in accordance with Government Code section 11349.6(b).

NOTE: Authority cited: Sections 11342.4 and 11349.1, Government Code. Reference: Sections 11346.1, 11349.1, 11349.3 and 11349.6, Government Code.

HISTORY:

1. New section filed 6-26-90; operative 7-25-90 (Register 90, No.35).

2. Amendment of section heading, new subsections (a)-(a)(2), subsection relettering, amendment of newly designated subsections (c), (f) and (g)(1) and repealer of

subsections (h)-(h)(2) filed 1-8-99; operative 2-7-99 (Register 99, No. 2).

Section 56. Emergency Regulations Adopted After Completion of Rulemaking Procedures.

(a) When a regulation adopted as an emergency is submitted to OAL with the certificate of compliance and the rulemaking file, and the rulemaking file documents that the agency has complied with Government Code Sections 11346.2 through 11346.9, OAL shall:

(1) review the emergency statement within ten days and not file the regulation if OAL determines that the statement fails to satisfy the requirements of Government Code Section 11346.1(b); and

(2) review the emergency regulation and rulemaking file within 30 days and order repeal of the regulation if OAL determines that the regulation fails to meet the standards set forth in Section 11349.1 of the Government Code or if OAL determines that the regulation fails to comply with the APA.

In re-submitting to OAL a regulation previously withdrawn or disapproved in accordance with either Government Code Section 11349.3 or 11349.4, an agency may incorporate by reference all or any part of the withdrawn or disapproved file. To incorporate such files, the agency shall submit a transmittal memo identifying the prior rulemaking file by date of submission and specifying that portion of the prior file that is incorporated by reference.

NOTE: Authority cited: Sections 11342.4 and 11349.1(c), Government Code. Reference: Section 11347.3(b), Government Code.
HISTORY:

NOTE: Authority cited: Sections 11342.4 and 11349.1(c), Government Code. Reference: Sections 11346.1 and 11349.6, Government Code.
HISTORY:

1. New section filed 1-2-86; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 86, No. 1).
2. Change without regulatory effect pursuant to Section 100, Title 1, California Code of Regulations designating the first sentence of text as subsection (a) and adding "(c)" to "11349.1" in the NOTE filed 1-5-89; operative 1-5-89 (Register 89, No. 3).
3. Editorial correction of HISTORY No. 2 (Register 89, No. 12).
4. Change without regulatory effect pursuant to Section 100, Title 1, California Code of Regulations substituting "OAL" for "the Office of Administrative Law" in subsection (a); substituting "OAL" for "the office" in subsections (a), (a)(1), (a)(2); and substituting "APA" for "provisions of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code" in subsection (a)(2) filed 7-2-90; operative 7-25-90 (Register 90, No.35).
5. Change without regulatory effect pursuant to Section 100, Title 1, California Code of Regulations, substituting "11346.2" for "11346.4" and "11346.9" for "11346.8" in subsection (a). Filed 1-3-95; operative upon filing (Reg. 95, No. 1).

Section 84. Incorporation of Prior Files by Reference.

1. New section filed 1-2-86; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 86, No. 1).
2. Change without regulatory effect pursuant to Section 100, Title 1, California Code of Regulations substituting "11349.1(c)" for "11349.1(b)" in the NOTE filed 1-5-89; operative 1-5-89 (Register 89, No. 3).
3. Editorial correction of HISTORY No. 2 (Register 89, No. 12).
4. Change without regulatory effect pursuant to Section 100, Title 1, California Code of Regulations substituting "OAL" for "the Office of Administrative Law" in first sentence filed 7-2-90; operative 7-25-90 (Register 90, No.35).

Section 86. Statement of Mailing Notice.

The rulemaking record shall contain a statement confirming that the agency

complied with the provisions of Government Code Section 11346.4(a)(1) through (4) regarding the mailing of notice of proposed action at least 45 days prior to public hearing or close of the public comment period, and stating the date upon which the notice was mailed. This section is not intended to require an agency to provide a copy of its mailing list to support the statement.

NOTE: Authority cited: Sections 11342.4 and 11349.1(c), Government Code. Reference: Section 11346.4, Government Code.
HISTORY:
1. New section filed 1-2-86; effective upon filing pursuant to Government Code section 11346.2(d) (Register 86, No. 1).
2. Change without regulatory effect pursuant to Section 100, Title 1, California Code of Regulations adding "(c)" to "11349.1" in the NOTE filed 1-5-89; operative 1-5-89 (Register 89, No. 3).
3. Editorial correction of HISTORY No. 2 (Register 89, No. 12).

Section 90. "Transcript," "Recording," or "Minutes."

(a) Information submitted in compliance with the requirements of Government Code Section 11347.3(a)(8) shall fully and

NOTE: Authority cited: Section 11349.1(c), Government Code. Reference: Sections 11347.3(a)(8) and 11350(b), Government Code; *California Optometric Association v. Lackner* (1976) 60 Cal.App.3d 500, 510, 131 Cal.Rptr. 744, 751, *California Association of Nursing Homes, Sanitariums, Rest Homes and Homes for the Aged, Inc. v. Williams* (1970) 4 Cal.App.3d 800, 810-812, 84 Cal.Rptr. 590.
HISTORY:
1. New section filed 1-2-86; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 86, No. 1).
2. Change without regulatory effect pursuant to Section 100, Title 1, California Code of Regulations adding quotation marks around "Transcript," "Recording," and "Minutes" in the section heading and substituting "11349.1(c)" for "11349.1(b)" and adding case name page reference corrections in the NOTE filed 1-5-89; operative 1-5-89 (Register 89, No. 3).
3. Editorial correction of HISTORY No. 2 (Register 89, No. 12).

accurately reflect all proceedings applicable to the rulemaking action under review and shall be adequate:

(1) to ensure effective review of the record by OAL, in light of the provisions of the APA providing for meaningful public participation; and

(2) to permit effective judicial review of the record.

(b) Material submitted as a "transcript" or "recording" in fulfillment of this requirement shall consist of a word-by-word, speaker-by-speaker record of all that is said on the record in any and all public hearings or public meetings held as part of the adoption, amendment or repeal of the regulation in question.

(c) "Minutes" submitted in fulfillment of this requirement shall provide a summary of the proceedings, and in all cases shall contain information sufficient to meet the requirement specified in subsection (a).

(d) Where information submitted pursuant to this section also contains material that is unrelated to the subject of the rulemaking action, that information submitted in compliance with subsection (b) or (c) shall be clearly identified as such.

4. Change without regulatory effect pursuant to Section 100, Title 1, California Code of Regulations substituting "OAL" for "the Office of Administrative Law" and "APA" for "Administrative Procedure Act" in subsection (a)(1) filed 7-2-90; operative 7-25-90 (Register 90, No.35).

Section 100. Publication of "Changes Without Regulatory Effect."

(a) Subject to the approval of OAL as provided in subsections (c) and (d), an agency may add to, revise or delete text published in the California Code of Regulations without complying with the rulemaking procedure specified in Article 5 of the APA only if the change does not materially alter any

requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision. Subject to the approval of OAL, the Department of Social Services may add to, revise or delete text published in the department Manual of Policies and Procedures (MPP) without complying with the rulemaking procedure specified in Article 5 of the APA only if the change does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of the MPP. The addition, revision or deletion is a "change without regulatory effect." Changes without regulatory effect include, but are not limited to:

(1) renumbering, reordering, or relocating a regulatory provision;

(2) deleting a regulatory provision for which all statutory or constitutional authority has been repealed;

(3) deleting a regulatory provision held invalid in a judgment that has become final, entered by a California court of competent jurisdiction, a United States District Court located in the State of California, the United States Court of Appeals for the Ninth Circuit, or the United States Supreme Court; however, OAL shall not approve any proposed change without regulatory effect if the change is based on a superior court decision which invalidated the regulatory provision solely on the grounds that the underlying statute was unconstitutional;

(4) revising structure, syntax, cross-reference, grammar, or punctuation;

(5) changing an "authority" or "reference" citation for a regulation; and,

(6) making a regulatory provision consistent with a changed California statute if both of the following conditions are met:

(A) the regulatory provision is inconsistent with and superseded by the changed statute, and

(B) the adopting agency has no discretion to adopt a change which differs in substance from the one chosen.

(b) In submitting a change without regulatory effect to OAL for review the agency shall:

(1) submit seven copies of the regulation with an addition shown in underline or italics and a deletion shown in strike-out; and

(2) attach to each copy a completed Form 400, with at least one Form 400 bearing an original signature; and

(3) submit a written statement explaining why the change does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision.

(c) OAL shall determine whether a change submitted is a change without regulatory effect within 30 working days of its receipt. OAL shall send written notification of the determination to the agency which submitted the changes.

(d) If OAL determines that the submitted change is a change without regulatory effect, OAL shall file it with the Secretary of State and have it published in the California Code of Regulations. If the change without regulatory effect is a change to the MPP, OAL shall file the change with the Secretary of State and the Department of Social Services shall publish the change in the MPP.

NOTE: Authority cited: Sections 11342.4 and 11349.1(c), Government Code. Reference: Sections 11342(g), 11343.8, 11344.6 and 11346, Government Code; and Article III, section 3.5, California Constitution.

HISTORY:

1. New section filed 1-2-86; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 86, No. 1).

2. Change without regulatory effect pursuant to Section 100, Title 1, California Code of Regulations adding quotation marks around "Changes Without Regulatory Effect" in the section heading; substituting "California

Code of Regulations" for "California Administrative Code" in subsections (b), (b)(1) and (b)(2); and substituting "11349.1(c)" for "11349.1(b)" in the NOTE filed 1-5-89; operative 1-5-89 (Register 89, No. 3).

3. Editorial correction of HISTORY No. 2 (Register 89, No. 12).

4. Change without regulatory effect pursuant to Section 100, Title 1, California Code of Regulations substituting "OAL" for "the Office of Administrative Law" and "the office" in subsections (a), (b) and (c); deleting "FACE SHEET FOR FILING ADMINISTRATIVE REGULATIONS WITH THE OFFICE OF ADMINISTRATIVE LAW, STATE OF CALIFORNIA STD" and "(rev.8/85)" in subsection (c)(2) filed 7-2-90; operative 7-25-90 (Register 90, No.35).

5. Change without regulatory effect pursuant to Section 100, Title 1, California Code of Regulations adding new subsection (a); renumbering subsections (a), (b) and (c) as new subsections (c), (d) and (b) respectively; adding the word "calendar" to renumbered subsection (c); and changing "face sheet" to "Form 400" in subsection (b)(2) filed 3/25/92, operative upon filing (Register 92, No. 19).

6. Amendment of section filed May 18, 1994; operative May 18, 1994 (Register 94, No. 20).

7. Editorial correction of subsection (d) and HISTORY 4 and 5 (Register 94, No. 23).

8. Change without regulatory effect pursuant to Section 100, Title 1, California Code of Regulations deleting "s" from the second "changes" in subsection (d) and adding

4. Renumbering and amendment of former section 120 as section 5 filed 6-26-90; operative 7-25-90 (Register 90, No.35).

The following page is
Appendix A--OAL's Form 400, STD. 400 (rev. 4-99). (Appendix A to Article 2 of Chapter 1, Title 1, California Code of Regulations.)

"11342(g)," to the reference citation under "NOTE." Filed 1-3-95; operative upon filing (Reg. 95, No. 1).

9. Amendment of subsections (a) and (d) filed 1-8-99; operative 2-7-99 (Register 99, No. 2).

Section 120. Publication Date and Submission of Notice for Approval and Publication.

HISTORY:

1. New Chapter 1 (Section 120) filed 12-1-82; effective thirtieth day thereafter (Register 82, No. 49). For prior history of former Chapter 1, see Registers 81, No. 6 and 79, No. 1.

2. Change without regulatory effect pursuant to Section 100, Title 1, California Code of Regulations substituting "Regulatory" for "Administrative" in subsection (a); substituting "11342.4" for "11344.6" in the "Authority cited" portion of the NOTE; and deleting "11344.5" and "11346.51" and adding "11344.1" and "11346.55" to the "Reference" portion of the NOTE filed 1-5-89; operative 1-5-89 (Register 89, No. 3).

3. Editorial correction of HISTORY No. 2 (Register 89, No. 12).

ARTICLE 3. Procedures for Regulatory Determinations.

SECTION

121.	Definitions
122.	Contents of Requests for Determination
123.	Processing of a Request for Determination; Initial Receipt and Review, Commencing Active Consideration, Notification of Commencement of Active Consideration
124.	Notice of Active Consideration; Public Comments; Submittal of Written Information or Evidence by Interested Persons
125.	Agency Response; Consideration of Written Information or Evidence

126.	Time Period Within Which OAL Shall Issue a Determination
127.	Notification of the Issuance of a Determination
128.	Procedures Governing Issuance of a Determination by OAL on its Own Motion

(1) it has been adopted as a regulation and filed with the Secretary of State pursuant to the APA, or,

(2) It has been exempted by statute from the requirements of the APA.

(b) "Request for determination" means a request made by any person to OAL, in accordance with the procedures specified in this article, to issue a determination as provided by Government Code Section 11340.5, as to whether a state agency rule is a "regulation," as defined in Government Code Section 11342(g).

(c) "State agency rule" means any state agency guideline, criterion, bulletin, manual, instruction, order, standard of general application or other rule which has not been adopted as a regulation and filed with the Secretary of State pursuant to the APA.

(d) "Transmit" means to physically deliver a letter, document or other written instrument to the addressee or to deposit the written instrument into the United States mail or other mail delivery service.

NOTE: Authority cited: Section 11342.4, Government Code. Reference: Section 11340.5(b), Government Code; and *Armistead v. State Personnel Board* (1978) 22 Cal. 3rd 198, 149 Cal.Rptr. 1.

HISTORY:

1. New Article 2 (Sections 121-128) filed 10-31-85; effective thirtieth day thereafter (Register 85, No. 44).

2. Change without regulatory effect pursuant to Section 100, Title 1, California Code of Regulations restructuring text of subsection (a) with designations of subsections (a), (a)(1) and (a)(2); adding quotation marks around "regulation" in subsection (a); capitalizing "it" in subsections (a)(1) and (a)(2); substituting "pursuant to" for "in accordance with" in subsection (a)(1) and adding a comma before and after "or"; deleting "unless" at the beginning of subsection (a)(2); substituting "article" for "chapter" and adding quotation marks around "regulation" in subsection (b); adding "(b)" to "11347.5" and adding a California Reporter reference in the NOTE filed 3-16-89; operative 3-16-89 (Register 89, No. 18).

3. Editorial correction of HISTORY No. 2 (Register 89, No. 18).

4. Change without regulatory effect pursuant to Section 100, Title 1, California Code of Regulations substituting "OAL" for "the office" in subsection (a) and "the Office of Administrative Law" in subsection (b); substituting "APA" for "Administrative Procedure Act" in subsection (a)(1), "Act" in subsection (a)(2) and "Administrative Procedure Act, Chapter 3.5 of Title 2, Division 3, Part 1 of the Government Code" in subsection (c) filed 7-2-90; operative 7-25-90 (Register 90, No.35).

5. Change without regulatory effect pursuant to Section 100, Title 1, California Code of Regulations, substituting "11342(g)" for "11342(b)," in subsection (a); "11340.5" for "11347.5" and "11342(g)" for "11342(b)" in subsection (b); and "11340.5(b)" for "11347.5(b)" in the reference citation under "NOTE." Filed 1-3-95; operative upon filing (Reg. 95, No. 1).

Section 121. Definitions.

The following definitions shall apply to the regulations contained in Article 2 of this chapter:

(a) "Determination" means a finding by OAL as to whether a state agency rule is a "regulation," as defined in Government Code Section 11342(g), which is invalid and unenforceable unless

Section 122. Contents of Requests for Determination.

(a) All requests for determination shall be in writing, and shall contain at a minimum:

(1) the name and address, of the person making the request;

(2) the name of state agency which has issued, or is utilizing, enforcing, or attempting to enforce the rule;

(3)(A) a copy of the state agency rule which is the subject of the request, or,

(B) a factual description of the rule and its application to the person making the request or other affected persons. (If a copy of the state agency rule is not available, a description of the state agency's method of issuance, utilization, enforcement, or attempted enforcement of the rule.)

(c) Any person who submits to OAL a request for determination shall first transmit a copy of the request for determination and any written information or evidence contained in or submitted with the request to the head of the state agency whose rule is the subject of the request. A copy of a signed and dated statement under penalty of perjury telling how and when the person making the request transmitted the documents to the head of the state agency shall accompany the request for determination.

(d) If the request is submitted by a state agency, the request shall be signed and certified by the head of the state agency or his or her authorized representative in accordance with Code of Civil Procedure Section 2015.5. The request shall contain the legal analysis and conclusions of the agency's legal counsel in addition to the other information required by this section.

(e) If the request does not satisfy the requirement of this section, OAL shall return the request, specifying in writing the requirement or requirements which must be satisfied before the request can be considered.

NOTE: Authority cited: Section 11342.4, Government Code. Reference: Section 11340.5(b), Government Code.
HISTORY:

1. New section filed 10-31-85; effective thirtieth day thereafter (Register 85, No. 44).

2. Change without regulatory effect pursuant to Section 100, Title 1, California Code of Regulations adding "the" before "state" in subsection (a)(2); dividing subsection (a)(3) into (a)(3)(A) and (a)(3)(B) and adding a comma before and after "or" which separates the two provisions; incorporating (a)(4) into (a)(3)(B) and substituting "attempted enforcement" for "attempt to enforce"; deleting the comma after "determination" in subsection (c); incorporating the first and second sentence of subsection (e); deleting "The office shall return the request" before "if" and deleting "it" after "if"; substituting "satisfy" for "comply with," adding "return the request"; substituting "specifying" for "specify" and substituting "satisfied" for "complied with"; and adding "(b)" to "11347.5" in the NOTE filed 3-16-89; operative 3-16-89 (Register 89, No. 18).

3. Editorial correction of HISTORY Nos. 1 and 2 (Register 89, No. 18).

4. Change without regulatory effect pursuant to Section 100, Title 1, California Code of Regulations substituting "The" with "the" at the beginning of subsections (a)(1) and (a)(2); substituting "a" for "A" at the beginning of subsection (a)(3)(A); substituting "OAL" for "the office" in subsections (c) and (e) filed 7-2-90; operative 7-25-90 (Register 90, No.35).

5. Change without regulatory effect pursuant to Section 100, Title 1, California Code of Regulations substituting "11340.5(b)" for "11347.5(b)" in the reference citation under "NOTE." Filed 1-3-95; operative upon filing (Reg. 95, No. 1).

(b) The request and all written information or evidence submitted with the request shall be accompanied by a dated and signed written statement saying that the person submitting the request declares under penalty of perjury that he or she believes that the information contained in the request and any other written information or evidence submitted with the request is true and correct.

Section 123. Processing of a Request for Determination; Initial Receipt and Review, Commencing Active Consideration, Notification of Commencement of Active Consideration.

(a) Within five working days after the date of receipt by OAL of a request for determination, OAL shall transmit a written notification of its receipt to the person who submitted the request.

(b) All requests for determination which meet the requirements of Section 122 of

these regulations shall be considered by OAL in the order in which they are received.

(c) OAL shall commence active consideration of each request as soon as possible after its receipt within available program resources.

(d) When it commences active consideration of each request, OAL shall transmit written notification of commencement to: (1) the person who submitted the request; and,

(2) the state agency whose rule is the subject of the request.

NOTE: Authority cited: Section 11342.4, Government Code. Reference: Section 11340.5(b), Government Code.
HISTORY:

1. New section filed 10-31-85; effective thirtieth day thereafter
(Register 85, No. 44).

2. Change without regulatory effect filed pursuant to Section 100, Title 1, California Code of Regulations adding "Processing of a Request for Determination: initial Receipt and Review, Commencing Active Consideration, Notification of" and deleting "of a Request for Determination" after "Consideration" in the caption; separating the text into subsection (a) - (d); adding comma between "receipt" and "within" in subsection (c); changing "the office" to "it" in subsection (d); substituting "each" for "the" before the first "request" in subsection (d); adding "of commencement" after "notification" in subsection (d) and adding a colon after "to" in subsection (d); adding a semicolon after "request" in subsection (d)(1) and adding a comma after "and" in subsection (d)(1); and adding "(b)" to "11347.5" in the NOTE filed 3-16-89; operative 3-16-89 (Register 89, No. 18).

3. Editorial correction of HISTORY Nos. 1 and 2 (Register 89, No. 18).

4. Editorial correction of HISTORY No. 2 (Register 89, No. 26) .

5. Change without regulatory effect pursuant to Section 100, Title 1, California Code of Regulations substituting "OAL for "the office" where the term appeared filed 7-2-90; operative 7-25-90 (Register 90, No.35).

6. Change without regulatory effect pursuant to Section 100, Title 1, California Code of Regulations substituting "11340.5(b)" for "11347.5(b)" in the reference citation under "NOTE." Filed 1-3-95; operative upon filing (Reg. 95, No. 1).

Section 124. Notice of Active Consideration; Public Comments; Submittal of Written Information or Evidence by Interested Persons.

(a) When it commences active consideration of the request for determination, OAL shall publish in the California Regulatory Notice Register:

(1) the request for determination, or a summary or description of the request for determination, and

(2) a notice stating that

(A) any interested person may submit written information or evidence (which complies with the requirements of this section) concerning the state agency rule to OAL within 30 days after the date of publication of the notice; and

(B) such written information or evidence received by OAL within the 30-day period shall be considered in making a determination.

(b) All written information or evidence submitted to OAL by any interested person pursuant to this section shall be accompanied by a dated and signed written statement saying that the person submitting the information or evidence declares under penalty of perjury that he or she believes that the information or evidence is true and correct.

(c) Any person who submits written information or evidence to OAL pursuant to this section shall first transmit a copy of the written information or evidence to the head of the state agency whose rule is the subject of the request for determination. A copy of a signed and dated statement under penalty of perjury telling how and when the person transmitted a copy of the written information or evidence to the head of the state agency shall be submitted to OAL with the written information or evidence.

NOTE: Authority cited: Section 11342.4, Government Code. Reference: Sections 11340.5(b), Government Code.

HISTORY:

2. Change without regulatory effect pursuant to Section 100, Title 1, California Code of Regulations adding "Notice of Active Consideration; Public Comments:" in the caption; dividing subsection (a) as subsections (a), (a)(1), (a)(2), (a)(2)(A) and (a) (2)(B); substituting "it" for "the office" and adding "in the California Regulatory Notice Register" in subsection (a); deleting "in the California Administrative Notice Register" and adding "; and" in subsection (a)(1); deleting "The office shall at the same time publish" before "a notice," deleting "which shall specify" after "a notice," and adding "stating" to subsection (a)(2); adding parenthetical marks, substituting "the" for "this" before "notice" and adding "; and," in subsection (a)(2)(A); deleting "The notice shall also specify" at the beginning of subsection (a) (2) (B) ; adding " (b) " to "11347 .5" and deleting "and 11344.1(a)(8) " from the "Reference" portion of the NOTE filed 3-16-89; operative 3-16-89 (Register 89, No. 18).

3. Editorial correction of HISTORY Nos. 1 and 2 (Register 89, No. 18).

4. Editorial correction of HISTORY No. 2 (Register 89, No. 26).

5. Editorial correction of subsection (a)(2) printing error (Register 89, No. 33) .

6. Change without regulatory effect pursuant to Section 100, Title 1, California Code of Regulations substituting "OAL for "the office" where that term appeared in the text filed 7-2-90; operative 7-25-90 (Register 90, No .35).

7. Change without regulatory effect pursuant to Section 100, Title 1, California Code of Regulations substituting "11340.5(b)" for "11347.5(b)" in the reference citation under "NOTE." Filed 1-3-95; operative upon filing (Reg. 95, No. 1).

Section 125. Agency Response; Consideration of Written Information or Evidence.

(a) In making its determination, OAL shall consider all written information or evidence which is received by OAL and which fully complies with the provisions of Sections 122 and 124 of these regulations.

(b) In making its determination, OAL shall also consider the following written information or evidence received by OAL from the state agency prior to or within 45

1. New section filed 10-31-85; effective thirtieth day thereafter (Register 85, No. 44) .

days after the publication of the request for determination if it complies with the requirements of this section:

(1) the agency's responses, if any, to any written information or evidence submitted to OAL in accordance with the provisions of Sections 122 and 124 of these regulations;

(2) any other written information or evidence which the agency submits regarding whether the rule under consideration is a "regulation."

(c) Any response, written information or evidence submitted to OAL by the state agency pursuant to this section shall be signed and verified in accordance with Code of Civil Procedure Section 2015.5 by the head of the state agency or by his or her authorized representative.

(d) Any response, written information or evidence submitted to OAL by the state agency, shall at the same time be transmitted by the state agency to the person who submitted the request. A copy of a statement proving the transmittal, dated and signed under penalty of perjury, shall be submitted to OAL.

(e) Nothing in this section shall preclude the state agency which issued the rule for which the determination was requested from providing OAL with written information or evidence regarding the rule prior to OAL's commencement of active consideration of the request for determination, so long as the agency complies fully with the requirements of this section.

(f) In making its determination, OAL shall not consider any response, written information, or evidence submitted by any person or by the state agency which does not comply with the requirements of this section, Section 122 or Section 124 of these regulations.

NOTE: Authority cited: Section 11342.4, Government Code. Reference: Section 11340.5, Government Code.
HISTORY:
1. New section filed 10-31-85; effective thirtieth day thereafter (Register 85, No. 44).
2. Change without regulatory effect pursuant to Section 100, Title 1, California Code of Regulations adding
4. Change without regulatory effect pursuant to Section 100, Title 1, California Code of Regulations substituting "OAL for "the office" where that term appeared; adding quotation marks around "regulation." at the end of subsection (b)(2) filed 7-290; operative 7-25-90 (Register 90, No.35).
5. Change without regulatory effect pursuant to Section 100, Title 1, California Code of Regulations substituting "11340.5(b)" for "11347.5(b)" in the reference citation under "NOTE." Filed 1-3-95; operative upon filing (Reg. 95, No. 1).

Section 126. Time Period Within Which OAL Shall Issue a Determination.

Within 75 days of the date of publication of the notice regarding the commencement of active consideration of the request for determination, OAL shall issue a written determination as to whether the state agency rule is a regulation, along with the reasons supporting the determination.

NOTE: Authority cited: Section 11342.4, Government Code. Reference: Section 11340.5(b), Government Code.
HISTORY:
1. New section filed 10-31-85; effective thirtieth day thereafter (Register 85, No. 44).
2. Change without regulatory effect pursuant to Section 100, Title 1, California Code of Regulations adding "(b)" to "11347.5" in the NOTE filed 3-16-89; operative 3-16-89 (Register 89, No. 18).
3. Editorial correction of HISTORY Nos. 1 and 2 (Register 89, No. 18) .
4. Change without regulatory effect pursuant to Section 100, Title 1, California Code of Regulations substituting "OAL for "the office" in the caption and text filed 7-2-90; operative 7-25-90 (Register 90, No.35).
5. Change without regulatory effect pursuant to Section 100, Title 1, California Code of Regulations substituting "11340.5(b)" for "11347.5(b)" in the reference citation under "NOTE." Filed 1-3-95; operative upon filing (Reg. 95, No. 1).
"Agency Response;" to the caption; adding "(b)" to "11347.5" in the NOTE filed 3-16-89; operative 3-16-89 (Register 89, No. 18).
3. Editorial correction of HISTORY Nos. 1 and 2 (Register 89, No. 18).

Section 127. Notification of the Issuance of a Determination.

(a) OAL's determination and supporting reasons shall be

(1) filed upon issuance with the Secretary of State and shall become final on the 30th day after filing,

(2) published in the California Regulatory Notice Register, and

(3) transmitted to the person who submitted the request for determination, to the agency, to the Governor and to both Houses of the Legislature.

NOTE: Authority cited: Section 11342.4, Government Code. Reference: Sections 11340.5(b) and (c), Government Code.
HISTORY:
1. New section filed 10-31-85; effective thirtieth day thereafter (Register 85, No. 44).
2. Change without regulatory effect pursuant to Section 100, Title 1, California Code of Regulations dividing the text into subsections (a), (a)(1) , (a)(2), and (a)(3); substituting a comma for the period after subsection (a)(1); deleting "The office's determination and supporting reasons shall be" at the beginning, substituting "Regulatory" for "Administrative," and substituting ", and" for the period in subsection (a) (2); deleting "A copy of the office's determination and supporting reasons shall be" at the beginning of subsection (a)(3); adding " (b) and (c) " to "11347.5" and deleting "11344.l(a) (8)" from the "Reference" portion of the NOTE filed 3-16-89; operative 3-16-89 (Register 89, No. 18).
3. Editorial correction of HISTORY Nos. 1 and 2 (Register 89, No. 18).
4. Change without regulatory effect pursuant to Section 100, Title 1, California Code of Regulations substituting "OAL's" for "the office's" in subsection (a) filed 7-2-90; operative 7-25-90 (Register 90, No.35).
5. Change without regulatory effect pursuant to Section 100, Title 1, California Code of Regulations substituting "11340.5(b) and (c)" for "11347.5(b) and (c)" in the

reference citation under "NOTE." Filed 1-3-95; operative upon filing (Reg. 95, No. 1).

Section 128. Procedures

(a) The provisions of this article shall be applicable when OAL undertakes to issue a determination on its own motion.

(b) When OAL undertakes to issue a determination on its own motion:

(1) the notice (published pursuant to Subsection 124(a) of these regulations) shall specify that OAL intends to issue a determination on its own motion; and

(2) OAL's written determination (issued pursuant to Section 126 of these regulations) shall specify that OAL has issued the determination on its own motion.

(c) The notice and OAL written determination shall include a description of the state agency rule which is the subject of the determination proceeding.

NOTE: Authority cited: Section 11342.4, Government Code. Reference: Section 11340.5(b), Government Code.
HISTORY:

1. New section filed 10-31-85; effective thirtieth day thereafter (Register 85, No. 44).
2. Change without regulatory effect pursuant to Section 100, Title 1, California Code of Regulations adding "Procedures Governing" to the caption; dividing the text into subsections (a) - (c); substituting "article" for "chapter" in subsection (a); substituting "When the office undertakes to issue a determination on its own motion:" for "In such cases," in subsection (b); adding a parenthetical "published pursuant to Subsection 124(a) of these regulations" after "the notice" in subsection (b)(1); adding "shall specify" after the parenthetical in subsection (b)(1); adding "on its own motion;" after "determination" in subsection (b)(1); adding a parenthetical "issued pursuant to Section 126 of these regulations" after "determination" in subsection (b) (2); deleting "intends to issue, or" after "office" in subsection (b)(2); substituting "the" for ", such a" in subsection (b)(2); substituting "which is the subject of the request for determination proceeding" for "regarding which the office intends to issue, or has issued, such a determination" in subsection (c); and adding "(b)" to "11347.5" in the NOTE filed 3-16-89; operative 3-16-89 (Register 89, No. 18).

Governing Issuance of a Determination by OAL On Its Own Motion.

3. Editorial correction of HISTORY Nos. 1 and 2 (Register 89, No. 18).
4. Change without regulatory effect pursuant to section 100, Title 1, California Code of Regulations substituting "OAL for "the office" where the term appeared in the text filed 7-2-90; operative 7-25-90 (Register 90, No. 35).
5. Change without regulatory effect pursuant to Section 100, Title 1, California Code of Regulations substituting "11340.5(b)" for "11347.5(b)" in the reference citation under "NOTE." Filed 1-3-95; operative upon filing (Reg. 95, No. 1).

ARTICLE 4. Official Version of the California Code of Regulations.

Section 190. Official Version of the California Code of Regulations.

NOTE: Authority cited: Section 11344, Government Code. Reference: Section 11344, Government Code.
HISTORY:
1. New Article 4 (Section 190) filed 12-4-89; operative 12-4-89 (Register 89, No. 51).
2. Nonsubstantive change filed to repeal Section 190 on 3/25/92, operative upon filing (Register 92, No. 19). Ed. Note: The text of the repealed regulation read:

"Effective April 1, 1990, the official version of the California Code of Regulations shall be that version published by Barclays Law Publishers, P. 0. Box 3066, 384 Oyster Point Boulevard, Unit 9, South San Francisco, CA 94080-1992."

Prior to the nonsubstantive change, the editor's note, included in history note number one, read as set forth below.

"Ed. Note: The work of the printing, binding, packaging, and distribution of the official version of the California Code of Regulations, as revised in 1989, including supplements thereof is performed pursuant to an agreement which was negotiated and executed for the publication of the official version of the California Code of Regulations and the supplements thereof on December 4, 1989 between

Barclays Law Publishers and the Office of Administrative Law. The official version of the California Code of Regulations, as revised, shall be published on or before April 1, 1990."

OTHER STATUTES RELATED TO RULEMAKING

Certain California statutes other than the APA govern aspects of the rulemaking process and are generally applicable to regulatory agencies:

The California Public Records Act governs the availability or non-availability of "public records" to "persons" (Government Code sections 6250-6270).

The Information Practices Act of 1977 governs the collection, maintenance, use, and disclosure of personal information by state agencies and their employees (Civil Code sections 1798-1798.77).

The Bagley-Keene Open Meeting Act governs the conduct of "meetings," including notice of meetings and inspection of materials related to meetings. (Government Code sections 11120-11132.) (This act is modeled on the Ralph M. Brown Open Meeting Act (Gov. Code sections 54950-54962); legislative history and judicial interpretation of the Brown Act may be persuasive for the Bagley-Keene Act.)

The State Records Management Act governs the retention, disposition, and destruction of public records, and the development and use of forms (Government Code sections 14740-14775.) Significant uncodified language appears in statutes relating to the subject of forms management.

The Permit Reform Act of 1981 requires that agencies adopt specific deadlines and procedures to expedite the process of obtaining permits, licenses, certificates, registrations, and other forms of authorization required by a state agency (Government Code sections 15374-15378).

OTHER ENACTMENTS INCLUDE:

Government Code sections 17500-17613 provides procedures for carrying out the requirement that local government entities be reimbursed for increased costs which result from certain state agency mandates (Cal. Const. art. XIIIB sec. 6, and Part 7 of Division 4 of the Government Code).

The State Building Standards Law provides for the review, codification and publication of building standards and regulations related directly to building standards, by the State Building Standards Commission (Health and Safety Code sections 18901-18949.1).

Computation of Time. Government Code section 6800 provides "The time in which any act provided by law is to be done is computed by excluding the first day, and including the last, unless the last day is a holiday, and then it is also excluded."

Government Code section 6707 provides "When the last day for filing any instrument or other document with a state agency falls upon a Saturday or holiday, such act may be performed upon the next business day with the same effect as it had been performed upon the day appointed."

Suspension of statutes, rules and regulations during state of emergency.
Government Code section 8571 allows the Governor to suspend regulations or statutes in the event of an emergency.

Government Code sections 6200, 6201, and 6203 define crimes for destruction or concealment of records and for false certifications.

Government Code section 6215 requires all state documents including regulations to be written in "plain straightforward language."

Government Code section 11002 provides that payments to state agencies are deemed received upon mailing. Government Code section 11003 provides that applications to state agencies are deemed filed upon mailing; and section 11004 limits the application of sections 11002 and 11003.

Government Code section 11020 establishes office hours for state agencies.

Government Code sections 11110-11112 require that forms of bonds required by state agencies be approved by the attorney general.

The above is not a complete identification of laws which may affect rulemaking generally, or a specific agency's rulemaking, or rulemakings on specific subjects.

[The following sections are referred to frequently and are printed in full for your convenience.]

GOVERNMENT CODE

Title 1. "General"
Division 7. "Miscellaneous"
Chapter 3.5. "Inspection of Public Records"

Section 6252. Definitions.

As used in this chapter:

. . .

(e) "Public records" includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. "Public records" in the custody of, or maintained by, the Governor's office means any writing prepared on or after January 6, 1975.

(f) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, and other documents.

Section 6270. Sale, exchange or otherwise providing records subject to disclosure to private entities; prohibition; exception

(a) Notwithstanding any other provision of law, no state or local agency shall sell, exchange, furnish, or otherwise provide a public record subject to disclosure pursuant to this chapter to a private entity in a manner that prevents a state or local agency from providing the record directly pursuant to this chapter. Nothing in this section requires a state or local agency to use the State Printer to print public records. Nothing in this section prevents the destruction of records pursuant to law.

(b) This section shall not apply to contracts entered into prior to January 1, 1996, between

the County of Santa Clara and a private entity for the provision of public records subject to disclosure under this chapter.

Section 8571. Suspension of statutes, rules and regulations

During a state of war emergency or a state of emergency the Governor may suspend any regulatory statute, or statute prescribing the procedure for conduct of state business, or the orders, rules, or regulations of any state agency, including subdivision (d) of Section 1253 of the Unemployment Insurance Code, where the Governor determines and declares that strict compliance with any statute, order, rule, or regulation would in any way prevent, hinder, or delay the mitigation of the effects of the emergency.

Title 2. "Government of the State of California"
Division 3 - "Executive Department"
Part 1 - "State Departments and Agencies"
Chapter 1 - "State Agencies"
Article 1 - "General"

Section 11000. Definitions

(a) As used in this title, "state agency" includes every state office, officer, department, division, bureau, board, and commission. As used in any section of this title that is added or amended effective on or after January 1, 1997, "state agency" does not include the California State University unless the section explicitly provides that it applies to the university.

(b) References to particular state agencies in this title, without further identification, such as to the "Treasurer" or "Department of General Services," are references to the state officer or agency known by that name.

Section 11017.5. Enactment of statute establishing new programs or requiring regulatory action; summary of action taken; regulation information to author.

(a) When a statute is enacted establishing a new program or requiring interpretation pursuant to the Administrative Procedure Act, the state agency responsible for the program or regulatory action shall, six months after the operative date or the effective date of the statute, whichever is later, issue a clear and concise summary of actions taken to implement the statute to the author of the statute, the policy committees in each house of the Legislature that considered the statute and, if the statute has been considered by the fiscal committee of either house of the Legislature, to the Joint Legislative Budget Committee and to the fiscal committee of each house of the Legislature that considered the statute.

(b) In addition, the state agency responsible for the program or regulatory action shall send copies of all regulations proposed to implement the statute, and notice of any hearings held on those regulations before those hearings are held, to the author of the statute, so long as the author is a Member of the Legislature.

Section 11017.6. Rulemaking Calendar; Schedules; Information to Author of Statutes

Every state agency responsible for implementing a statute which requires interpretation pursuant to the Administrative Procedure Act shall prepare, by January 30 of each year, a rulemaking calendar for that year. The rulemaking calendar shall be prepared in accordance with a format specified by the office, approved by the head of the department or, if the rulemaking agency is an entity other than a department, by the officer, board, commission, or other entity which has been delegated the authority to adopt, amend, or repeal regulations, and published in the California Regulatory Notice Register. The preparation of the rulemaking calendar shall not preclude adoption of a regulation that is not included in the rulemaking calendar but which is required by circumstances not reasonably anticipated at the time that the rulemaking calendar is prepared.

The rulemaking calendar shall consist of two schedules as follows:

(a) A schedule which describes the rulemaking necessary to implement statutes enacted during the previous year. The schedule shall include the projected dates on which the agency plans to:

(1) Publish the notice of proposed action for each rulemaking.

(2) Schedule a public hearing if one is required or requested.

(3) Adopt the regulations.

(4) Submit the regulations to the office for review.

In addition, the schedule shall identify the organizational unit within the agency which is responsible for each rulemaking and the name and telephone number of the agency officer to whom inquiries concerning the rulemaking may be directed.

Section 12223.5. Storage of Legislative Committee Files and State Agency Rulemaking Files by State Archives.

(b) A schedule which describes all other rulemaking the agency plans to propose, to implement or interpret other statutes enacted during years prior to the previous year. The schedule shall contain the same information concerning rulemaking as is required in the schedule prepared under subdivision (a), and a report on the status of all uncompleted rulemaking that was described on previous calendars.

In addition to publishing the rulemaking calendar in the California Regulatory Notice Register, state agencies subject to this section shall send the calendar to the author of each statute enacted during the previous year for which the agency has responsibility, together with an explanation of the priority the agency has given the statute in the rulemaking calendar.

ARTICLE 11. "FINES AND IMPRISONMENT"

Section 11145. Statutory Authorization

No state agency shall adopt or enforce any rule or regulation a violation of which can result in the imposition of a fine or imprisonment, or both, unless a statute specifically authorizes the imposition of such fine or imprisonment, or both, for a violation of the rule or regulation.

CHAPTER 3, ARTICLE 4, "STATE ARCHIVES"

The Secretary of State shall receive into the State Archives any official committee file

transmitted pursuant to Section 9080 or rulemaking file transmitted pursuant to Section 11347.3. The Secretary of State may designate a time for the delivery of files in consideration of document processing or storage limitations. The Secretary of State shall not remove, alter, or destroy or otherwise dispose of any item contained in a file received pursuant to this section. Nothing in this section, or in Sections 9080 or 11347.3, shall prohibit the conversion of an official committee file or rulemaking file to another accessible format.

PART 5.5. "DEPARTMENT OF GENERAL SERVICES," CHAPTER 5. "STATE RECORDS MANAGEMENT ACT," ARTICLE 4. "DISPOSAL OF RECORDS"

Section 14755. Determinations Prior to Destruction of Records

(a) No record shall be destroyed or otherwise disposed of by any agency of the state, unless it is determined by the director that the record has no further administrative, legal, or fiscal value and the Secretary of State has determined that the record is inappropriate for preservation in the State Archives.

(b) The director shall not authorize the destruction of any record subject to audit until he or she has determined that the audit has been performed.

(c) The director shall not authorize the destruction of all or any part of an agency rulemaking file subject to Section 11347.3.

PART 5.5. "DEPARTMENT OF GENERAL SERVICES," CHAPTER 7. ARTICLE 6. "MAINTENANCE OF AGENCY MAILING LISTS."

Section 14911. Mailing Lists; Annual Correction

Whenever any state agency maintains a mailing list of public officials or other persons to whom publications or other printed matter is sent without charge, the state agency shall correct its mailing list and verify its accuracy at least once each year. This shall be done by addressing an appropriate post card or letter to each person on the mailing list. The name of any person who does not respond to such letter or post card, or who indicates that he does not desire to receive such publications or printed matter, shall be removed from the mailing lists. The responses of those desiring to be on the mailing list shall be retained by these agencies for one year.

TRADE AND COMMERCE AGENCY

15363.6 Responsibilities of secretary

The secretary shall have the following responsibilities:

(a) Coordinating the various trade, investment, and tourism activities of the California State World Trade Commission and the Department of Commerce to ensure that the resources that the state has invested in these programs are used effectively and efficiently and that they foster the state's reputation as a source of high quality, cost-effective goods and services including tourism destinations.

(b) Coordinating, on behalf of the Governor, the use of the overseas trade offices by any

state export program not under the California State World Trade Commission, such as those that are operated by the Department of Food and Agriculture and the California Energy Commission, and by any state agency which may have occasion to need the services of the overseas trade offices in carrying out that agency's official duties and responsibilities.

(c) Reporting to the Governor and the Legislature on an annual basis about the policies, plans, budgeting, and accomplishments of the agency and its programs.

(d) In his or her capacity as a member of the Governor's cabinet, coordinating the development of a state policy on economic development and trade, and advising the Governor and members of the cabinet of the potential impacts of regulations on the state's business, economy, and job base. The initial policy and implementation strategy shall be included as a part of the secretary's first annual report to the Governor and the Legislature following enactment of this chapter. Each year thereafter, the secretary's annual report shall discuss economic development and trade policies including accomplishments and needed modifications.

(e) Evaluating, at his or her discretion, the findings and determinations required of any state agency which proposes to adopt regulations under Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1, including economic and cost impacts, reporting requirements, and alternatives analyses. The secretary shall, during the written comment period specified pursuant to paragraph (9) of subdivision (a) of Section 11346.5, submit written comments into the record of the agency which proposes to adopt those regulations in those instances when the secretary determines that the contents of the notice of the proposed action or the supporting analysis and the initial statement of reasons do not sufficiently support the findings and determinations of the agency. The secretary may, at his or her discretion, comment on other aspects of the proposed action that significantly impact the state's business, industry, economy, or job base, including the cumulative effects of the proposed action that significantly impact the state's business, industry, economy, or job base, including the cumulative impacts of the proposed action considered along with regulatory requirements in place at the federal, state, and local levels.

PART 6.7. "DEPARTMENT OF ECONOMIC AND BUSINESS DEVELOPMENT," CHAPTER 3. "PERMIT REFORM ACT OF 1981" (Government Code Sections 15374-15378)

Section 15374. Legislative Finding, Declaration and Intent

The Legislature finds and declares that current administrative practices often result in unnecessary and burdensome delays in the process of obtaining permits, licenses, certificates, registrations, and other similar forms of authorizations from state agencies. It is the intent of the Legislature that this chapter create a system of specific deadlines and procedures designed to expedite the process of obtaining permits and other forms of authorizations and thereby ensuring the timely and efficient handling of permit applications.

Section 15375. Definitions of "Permit" and "State Agency"

(a) "Permit" means any license, certificate, registration, permit, or any other form of authorization required by a state agency to engage in a particular activity or act. Permit does not mean activity subject to the provisions of Chapter 4.5 (commencing with Section 65920) of Division 1 of Title 7, any permit issued by the Franchise Tax Board under Part 10 (commencing with Section 17001), Part 10.5 (commencing with Section 19501), or Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code, or any document considered to be a receipt.

(b) "State agency" means any agency, board, commission, or bureau of the state government.

Section 15376. Regulations Concerning Permits

All state agencies which issue permits shall adopt regulations regarding their procedures for considering and issuing permits, specifying the following criteria:

(a) A period dating from the receipt of a permit application within which the agency must either inform the applicant, in writing, that the application is complete and accepted for filing, or that the application is deficient and what specific information is required.

(b) A period dating from the filing of a completed application within which the agency must reach a permit decision.

(2) The permit-issuing agency must rely on another public or private entity for all or part of the processing and the delay is caused by that other entity.

(c) The agency's median, minimum, and maximum times for processing a permit, from the receipt of the initial application to the final permit decision, based on the agency's actual performance during the two years immediately preceding the proposal of the regulation.

(d) The regulations shall be proposed in accordance with the following schedule:

(1) No later than April 1, 1983, for all agencies within the Health and Welfare Agency.

(2) No later than June 1, 1983, for all agencies within the State and Consumer Services Agency.

(3) No later than September 1, 1983, for all agencies within the Business, Transportation and Housing Agency.

(4) No later than December 1, 1983, for all agencies within the Resources Agency.

(5) No later than March 1, 1984, for all other agencies.

(e) Any new or additional permits required by any state agency after the effective date of this chapter shall be subject to the provisions of this chapter.

(f) An agency may amend its regulations to modify the agency's time periods.

(g) The rulemaking file submitted to the Office of Administrative Law shall contain a justification for time periods proposed.

(h) A state agency shall be deemed to have good cause for exceeding the maximum time period established for processing a permit under either of the following circumstances:

(1) The number of permits to be processed exceeds by 15 percent the number processed in the same calendar quarter the preceding year.

Section 15377. Exemptions

The provisions of this chapter shall not apply to any of the following:

(a) Any permit subject to the provisions of Chapter 4.5 (commencing with Section 65920) of Division 1 of Title 7.

(b) Any permit for which the issuing agency can demonstrate that the median time of processing an application for the permit, from receipt of the initial application to the final permit decision, based upon the agency's actual performance during the 12 months immediately preceding the implementation of this chapter did not exceed seven days.

(c) Any permit issued by the Public Utilities Commission.

(d) Any permit issued by the Franchise Tax Board under Part 10 (commencing with Section 17001), Part 10.5 (commencing with Section 19501), or Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code.

(e) Any permit issued by the State Energy Resources Conservation and Development Commission.

(f) Any license or permit issued pursuant to the Fish and Game Code.

(g) Any document considered to be a receipt.

Section 15378. Responsibilities of Secretaries and Agency Heads

(a) The Secretaries of the Business, Transportation and Housing, Health and Welfare, California Environmental Protection, Resources, and State and Consumer Services Agencies, and the heads of the independent agencies subject to the provisions of this chapter shall ensure that the departments, commissions, boards, and other administrative divisions within their agencies that issue permits comply with the provisions of this chapter.

(b) The secretaries and agency heads shall adopt regulations establishing an appeal process through which an applicant can appeal directly to the secretary or agency head for a timely resolution of any dispute arising from a violation of the time periods required by this chapter. The regulations shall provide for the full reimbursement of any and all filing fees paid by a permit applicant whose application was not processed within the time limits adopted by an agency pursuant to this chapter, and whose appeal to the secretary or agency head was decided in the applicant's favor. The appeal shall be decided in the applicant's favor if the state agency has exceeded its established maximum time period for issuance or denial of the permit, the agency has complied with the notice and hearing requirements and the agency has failed to establish good cause for exceeding the time period pursuant to subdivision (h) of Section 15376. Information regarding the appeal process shall be included in the permit application forms issued by the agency.

(c) Secretaries and agency heads shall submit annual reports, each January 31st, to the Governor and the Legislature. The annual report shall include:

(1) The time periods required by this chapter for each permit issued by their agency, specifying any modifications or additions.

(2) The median, minimum, and maximum times for processing permits, from receipt of the initial application to the final permit decision, for each permit issued by their agency.

(3) A description of the appeal process required by this chapter and a summary of the number and disposition of appeals received by the secretary or agency head during the preceding year.

HEALTH AND SAFETY CODE--
REGULATION OF ENVIRONMENTAL PROTECTION

California Environmental Protection Agency

Section 57004. Scientific Peer Review.

(a) For purposes of this section, the following terms have the following meaning:

(1) "Rule" means either of the following:

(A) A regulation, as defined in subdivision (g) of Section 11342 of the Government Code.

(B) A policy adopted by the State Water Resources Control Board pursuant to the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code) that has the effect of a regulation and that is adopted in order to implement or make effective a statute.

(2) "Scientific basis" and "scientific portions" means those foundations of a rule that are premised upon, or derived from, empiracal data or other scientific findings, conclusions, or assumptions establishing a regulatory level, standard, or other requirement for the protection of public health or the environment.

(b) The agency, or a board, department, or office within the agency, shall enter into an agreement with the National Academy of Sciences, the University of California, the California State University, or any similar scientific institution of higher learning, any combination of those entities, or with a scientist or group of scientists of comparable

(2) The external scientific peer review entity, within the timeframe agreed upon by the board, department, or office and the external scientific peer review entity, prepares a written report that contains an evaulation of the scientific basis of the proposed rule. If the external scientific peer review entity finds that the board, department or office has failed to demonstrate that the scientific portion of the proposed rule is based upon sound stature and qualifications that is recommended by the President of the University of California, to conduct an external scientific peer review of the scientific basis for any rule proposed for adoption by any board, department, or office within the agency. The scientific basis or scientific portion of a rule adopted pursuant to Chapter 6.6 (commencing with Section 25249.5) of Division 20 or rule adopted pursuant to Chapter 6.6 (commencing with Section 25249.5) of Division 20 or Chapter 3.5 (commencing with Section 39650) of Division 26 shall be deemed to have complied with this section if it complies with the peer review processes established pursuant to these statutes.

(c) No person may serve as an external scientific peer reviewer for the scientific portion of a rule if that person participated in the development of the scientific basis or scientific portion of the rule.

(d) No board, department, or office within the agency shall take any action to adopt the final version of a rule unless all of the following conditions are met:

(1) The board, department, or office submits the scientific portions of the proposed rule, along with a statement of the scientific findings, conclusions, and assumptions on which the scientific portions of the proposed rule are based and the supporting scientific data, studies, and other appropriate materials, to the external scientific peer review entity for its evaulation. scientific knowledge, methods, and practices, the reportshall state that finding, and the reasons explaining the finding, within the agreed-upon timeframe. The board, department, or office may accept the finding of the external scientific peer review entity, in whole, or in part, and may revise the scientific portions of the proposed rule accordingly. If the board, department, or office disagrees with any aspect of the finding of the external

scientific peer review entity, it shall explain, and include as part of the rulemaking record, its basis for arriving at such a determination in the adoption of the final rule, including the reasons why it has determined that the scientific portions of the proposed rule are based on sound scientific knowledge, methods, and practices.

(e) The requirements of this section do not apply to any emergency regulation adopted pursuant to subdivision (b) of Section 11346.1 of the Government Code.

(f) Nothing in this section shall be interpreted to, in any way, limit the authority of a board, department, or office within the agency to adopt a rule pursuant to the requirements of the statute that authorizes or requires the adoption of the rule.

Section 57005. Major regulations; evaluation of alternatives; guidelines

(a) Commencing January 1, 1994, each board, department, and office within the agency, before adopting any major regulation, shall evaluate the alternatives to the requirements of the proposed regulation that are submitted to the board, department, or office pursuant to paragraph (7) of subdivision (a) of Section 11346.5 of the Government Code and consider whether there is a less costly alternative or combination of alternatives which would be equally as effective in achieving increments of environmental protection in a manner that ensures full compliance with statutory mandates within the same amount of time as the proposed regulatory requirements.

(b) For purposes of this section, "major regulation" means any regulation that will have an economic impact on the state's business enterprises in an amount exceeding ten million dollars ($10,000,000), as estimated by the board, department, or office within the agency proposing to adopt the regulation in the assessment required by subdivision (a) of Section 11346.3 of the Government Code.

(c) On or before December 31, 1994, after consulting with the Secretary of Trade and Commerce, the director or executive officer of each board, department, and office within the agency, and after receiving public comment, the secretary shall adopt guidelines to be followed by the boards, departments, and offices within the agency concerning the methods and procedures to be used in conducting the evaluation required by this section.

HEALTH AND SAFETY CODE--
BUILDING STANDARDS
(Selected Sections)

18909. Building Standard

(a) "Building standard" means any rule, regulation, order, or other requirement, including any amendment or repeal of that requirement, which specifically regulates, requires, or forbids the method of use, properties, performance, or types of materials used in the construction, alteration, improvement, repair, or rehabilitation of a building, structure, factory-built housing, or other improvement to real property, including fixtures therein, and as determined by the commission.

(b) Except as provided in subdivision (d), "building standard" includes architectural and design functions of a building or structure, including, but not limited to, number and location of doors, windows, and other openings, stress or loading characteristics of materials, and methods of fabrication, clearances, and other functions.

(c) "Building standard" includes a regulation or rule relating to the implementation or enforcement of a building standard not otherwise governed by statute, but does not include the adoption of procedural ordinances by a city or other public agency relating to civil, administrative, or criminal procedures and remedies available for enforcing code violations.

(d) "Building standard" does not include any safety regulations which any state agency is authorized to adopt relating to the operation of machinery and equipment used in manufacturing, processing, or fabricating, including, but not limited to, warehousing and food processing operations, but not including safety regulations relating to permanent appendages, accessories, apparatus, appliances, and equipment attached to the building as a part thereof, as determined by the commission.

(e) "Building standard" does not include temporary scaffoldings and similar temporary safety devices and procedures, which are used in the erection, demolition, moving, or alteration of buildings.

(f) "Building standard" does not include any regulation relating to the internal management of a state agency.

(g) "Building standard" does not include any regulation, rule, order, or standard which pertains to mobilehomes, manufactured homes, commercial coaches, special purpose commercial coaches, or recreational vehicles.

(h) "Building standard" does not include any regulation, rule, order or standard which pertains to a mobilehome park, recreational vehicle park, temporary recreational vehicle park, or travel trailer park, except that "building standard" includes the construction of permanent buildings and plumbing, electrical, and fuel gas equipment and installations within permanent buildings in mobilehome parks, recreational vehicle parks, temporary recreational vehicle parks, or travel trailer parks. For purposes of this subdivision, "permanent building" means any permanent structure constructed in the mobilehome park, recreational vehicle park, temporary recreational vehicle park, or travel trailer park which is a permanent facility under the control and ownership of the park operator.

(i) "Building standard" does not include any regulation, rule, order, or standard which pertains to mausoleums regulated under Part 5 (commencing with Section 9501) of Division 8.

(j) "Building standard" does not include any regulation adopted by the California Integrated Waste Management Board, the Department of Toxic Substances Control, or the State Water Resources Control Board concerning the discharge of waste to land or the treatment, transfer, storage, resource recovery, disposal or recycling of the waste.

18929.1. Adoption of regulations for annual code adoption cycle; procedures; contents

(a) The commission shall receive proposed building standards from state agencies for consideration in an annual code adoption cycle. The commission shall develop regulations setting forth the procedures for the annual adoption cycle. The regulations shall ensure all of the following:

(1) Adequate public participation in the development of building standards prior to submittal to the commission for adoption and approval.

(2) Adequate notice, in written form, to the public of the compiled building standards and their justification.

(3) Adequate technical review of proposed building standards and accompanying justification by advisory bodies appointed by the commission.
(4) Adequate time for review of recommendations by advisory bodies prior to action by the commission.
(5) The procedures shall meet the intent of the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code) and Section 18930.
(b) Where this section is in conflict with other provisions of this part, the intent of this section shall prevail.

18934. Public Participation; regulations

State agencies proposing to adopt building standards shall adopt, and the commission shall approve, regulations establishing procedures to ensure public participation in the development of building standards and regulations.

18942.1. Filing of regulations or orders of repeal; transmittal

(a) If a regulation or order of repeal is filed with the Office of Administrative Law, and if it appears to be a building standard, as defined by Section 18909, which has not been approved by the commission, the Office of Administrative Law shall consult with the commission or the commission's staff to determine the character and status of the filed regulation or order. Any building standard improperly transmitted to the Office of Administrative Law, as determined according to this section, shall not be then filed with the Secretary of State, but instead, the Office of Administrative Law shall transmit the building standard to the commission and notify the adopting agency of this action.
(b) If an administrative regulation or order of repeal is filed with the commission and it does not directly apply to the implementation or enforcement of a building standard, it shall not be submitted to the commission for action, but, instead, the commission shall transmit the regulations to the Office of Administrative Law and notify the submitting agency of this action.

18944. References to code in agency regulations

State agencies shall adopt regulations for publication in the titles of the California Code of Regulations containing other regulations of the agency to identify, by reference, the appropriate sections of the California Building Standards Code containing those building standards for which that agency has enforcement responsibility.

(b) Regulatory adoption shall be accomplished so as to facilitate the triennial adoption of the specified model codes pursuant to Section 18928.
(c) The regulations shall allow for the distribution of proposed building standards and regulatory changes to the public for review in compliance with the requirements of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1

18949.6. Procedure for adoption of standards and administrative regulations

(a) The commission shall adopt regulations setting forth the procedure for the adoption of building standards and administrative regulations that apply directly to the implementation or enforcement of building standards.

of Division 3 of Title 2 of the Government Code) and for the acceptance of responses from the public.

(d) With regard to proposed residential building standards, the Trade and Commerce Agency shall provide, if requested by the commission, an economic review of the housing cost impact statement or related study submitted by the code change proponent pursuant to Section 11346.5 of the Government Code.

VEHICLE CODE--
OFFICIAL TRAFFIC CONTROL DEVICES

21400. Uniform standards prescribed by Department of Transportation

The Department of Transportation shall, after consultation with local agencies and public hearings, adopt rules and regulations prescribing uniform standards and specifications for all official traffic control devices placed pursuant to this code, including, but not limited to, stop signs, yield right-of-way signs, speed restriction signs, railroad warning approach signs, street name signs, lines and markings on the roadway, and stock crossing signs placed pursuant to Section 21364.

The Department of Transportation shall, after notice and public hearing, determine and publicize the specifications for uniform types of warning signs, lights, and devices to be placed upon a highway by any person engaged in performing work which interferes with or endangers the safe movement of traffic upon that highway.

Only those signs, lights, and devices as are provided for in this section shall be placed upon a highway to warn traffic of work which is being performed on the highway.

Any control devices or markings installed upon traffic barriers on or after January 1, 1984, shall conform to the uniform standards and specifications required by this section.

JOINT RULE OF THE SENATE AND ASSEMBLY (SCR 1, as amended March 1, 1999)

Administrative Regulations

37.7. (a) Any Member of the Senate may request the Senate Committee on Rules, and any Member of the Assembly may request the Speaker of the Assembly, to direct a standing committee or the Office of Research of his or her respective house to study any proposed or existing regulation or group of related regulations. Upon receipt of a request, the Senate Committee on Rules or the Speaker of the Assembly shall, after review, determine whether a study shall be made. In reviewing the request, the Senate Committee on Rules or the Speaker of the Assembly shall determine:

(1) The cost of making the study.

(2) The potential public benefit to be derived from the study.

(3) The scope of the study.

(b) The study may consider, among other relevant issues, whether the proposed or existing regulation:

(1) Exceeds the agency's statutory authority.

(2) Fails to conform to the legislative intent of the enabling statute.

(3) Contradicts or duplicates other regulations adopted by federal, state, or local agencies.

(4) Involves an excessive delegation of regulatory authority to a particular state agency.

(5) Unfairly burdens particular elements of the public.

(6) Imposes social or economic costs that outweigh its intended benefits to the public.

(7) Imposes unreasonable penalties for violation.

The respective reviewing unit shall, in a timely manner, transmit its concerns, if any, to the Senate Committee on Rules or the Speaker of the Assembly, and the promulgating agency.

In the event that a state agency takes a regulatory action that the reviewing unit finds to be unacceptable, the unit shall file a report for publication in the Daily Journal of its respective house indicating the specific reasons why the regulatory action should not have been taken. The report may include a recommendation that the Legislature adopt a concurrent resolution requesting the state agency to reconsider its action or that the Legislature enact a statute to restrict the regulatory powers of the state agency taking the action.

JOINT RULE OF THE SENATE AND ASSEMBLY (SCR 1, as amended March 1, 1999)

Review of Administrative Regulations

40.1 The Joint Rules Committee, with regard to joint committees, and the respective rules committee of each house, with regard to standing and select committees of the house, shall approve any request for a priority review made by a committee pursuant to Section 11349.7 of the Government Code and shall submit approved requests to the Office of Administrative Law. The Joint Rules Committee or the respective rules committee, and the committee initiating the request, shall each receive a copy of the priority review.