

Memorandum 93-25

Subject: Study N-100 - Administrative Adjudication--Adoption and
Compilation of Regulations

Adoption of Regulations

A logistical problem with implementation of the new Administrative Procedure Act will be the need for many agencies to adopt regulations either modifying the act where necessary and permitted or fleshing out the act in places. The draft does include a one-year deferred operative date during which agencies can start this process, but with hundreds of affected agencies the Office of Administrative Law will be overloaded and there is the potential for trouble.

The staff recommends the following procedure to cope with this situation:

(1) An agency would be permitted to adopt temporary implementing regulations, bypassing the normal notice and hearing and OAL review procedures.

(2) The temporary regulations would be published and would be effective immediately, but would terminate within 18 months after the operative date of the new statute.

(3) During the 18-month period the regulations would be subject to normal notice and hearing and OAL review procedures. The temporary regulations would be replaced by permanent regulations adopted by this means.

The staff proposes the following draft:

§ 610.940. Adoption of regulations

610.940. (a) Notwithstanding Section 610.910, before, on, or after the operative date of this division an agency may adopt interim or permanent regulations to govern an adjudicative proceeding under Part 4 (commencing with Section 641.110).

(b) Interim regulations need not comply with the Article 5 (commencing with Section 11346) or Article 6 (commencing with Section 11349) of Chapter 3.5 of Part 1 of Division 3 of Title 2, but are governed by Chapter 3.5 in all other

respects. Interim regulations expire on June 30, 1997, unless earlier terminated or replaced by or readopted as permanent regulations in compliance with Articles 5 and 6 and all other provisions of Chapter 3.5.

Comment. Subdivision (a) of Section 610.940 makes clear that an agency may act to adopt regulations under this division before the division becomes operative. This will enable the agency to have any necessary regulations in place on the operative date.

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), and (3) regulations are subject to judicial review (Section 11350).

Interim regulations are only valid up to 18 months, through June 30, 1997. They may be replaced by or readopted as permanent regulations before then, through the standard administrative rulemaking process.

Compilation of Regulations

All implementing regulations, whether temporary or permanent, should be collected in a single title of the California Code of Regulations. This would ensure that general implementing regulations adopted by Office of Administrative Hearings applicable to all agencies would be found in the same place as special implementing regulations of the agencies.

§ 601.010. Compilation of regulations

601.010. Regulations adopted by the Office of Administrative Hearings or by any other agency to govern an adjudicative proceeding under Part 4 (commencing with Section 641.110) shall be compiled in one title of the California Code of Regulations relating to administrative procedure.

Comment. Section 601.010 is intended to facilitate access by the public to the law governing administrative procedure. Just as this division consolidates administrative procedure statutes, the California Code of Regulations should consolidate administrative procedure regulations. Consolidation of regulations is particularly important since administrative procedures of an agency may be affected not only by regulations adopted by the agency but also by

regulations adopted by the Office of Administrative Hearings. See, e.g., Section 641.210 (regulations governing declaratory decision adopted by OAH).

Staff Note. The heading of Article 1 of the Administrative Procedure Act, where this section would be inserted, would be expanded to read "Short Title and Governing Provisions".

This section could be expanded to include Office of Administrative Law regulations and other regulations governing rulemaking. We would wait until after the Commission's review of rulemaking to do this.

Respectfully submitted,

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