

## First Supplement to Memorandum 97-13

### Administrative Rulemaking: Revision of Rulemaking Procedure

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We have received two letters regarding Memorandum 97-13, attached as an exhibit. The letters are discussed below.

#### Initial Statement of Reasons

Memorandum 97-13 proposes to eliminate the duplicative statement of purpose requirement in Government Code Section 11346.2(b). See Memorandum 97-13, pp. 1-2. Both commentators object to this.

**James D. Simon**, of the Department of Social Services, writes on his own behalf.

Mr. Simon believes that the problem statement required by subdivision (b)(1) acts as a general statement of purpose for an entire proposed regulatory action. The statement of purpose and rationale required by subdivision (b)(2) then applies to each specific regulatory decision within the general regulatory action. Mr. Simon believes that, because these subdivisions serve functionally distinct purposes, eliminating subdivision (b)(1) would be a mistake. See Exhibit p. 1.

The staff believes that the language of the statute does not support the general/specific distinction Mr. Simon asserts. Subdivision (b)(1) requires a statement of the problem addressed by “each adoption, amendment, or repeal[.]” Subdivision (b)(2) requires a statement of specific purpose for “each adoption, amendment, or repeal[.]” See Gov’t Code § 11346.2(b). The scope is the same for both requirements.

**The California Nurses Association (CNA)** believes that a separate statement of public problem is “extremely beneficial when one must research the intent and interpretation of a regulation.” See Exhibit p. 2.

The staff agrees that a statement of the problem addressed is useful in understanding a regulatory action. However, a statement of specific purpose necessarily includes a statement of the problem to be addressed. Subdivision (b)(1) is therefore duplicative and adds nothing to the public’s understanding of the proposed regulatory action.

**Public Hearing**

The Commission has decided to solicit comment on the concept of allowing an agency to cancel a hearing if it requests notice from any person wishing to be heard and no person responds. See Memorandum 97-13, p. 6.

CNA strongly opposes this. Interested members of the public may attend a meeting “not intending to speak, but solely to monitor the activities of interested parties and to build coalitions amongst groups.” Such a person has an interest in the hearing but may not request to be heard at the meeting. To condition public hearings on a request to be heard places an “unreasonable burden on the regulated public.” See Exhibit p. 3.

**Other Comments**

The CNA writes in support of Memorandum 97-13 on two points:

(1) Electronic communications in the rulemaking process should be encouraged but not required. See Memorandum 97-13, pp. 5-6; exhibit pp. 2-3.

(2) On a showing of good cause, the one year deadline for completion of the rulemaking process should be extended. See Memorandum 97-13, pp. 6-7; Exhibit p. 3.

Respectfully submitted,

Brian Hebert  
Staff Counsel

James "D." Simon, 2/26/97 11:55 AM, Administrative Rulemaking

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Priority: Normal  
To: staff@clrc.ca.gov  
Cc: pcastillo@dss.ca.gov, rcampbell@dss.ca.gov  
Mime-Version: 1.0  
From: James "D." Simon <jsimon@dss.ca.gov>  
Subject: Administrative Rulemaking  
Date: Wed, 26 Feb 97 11:55:12 PST

California Law Revision Commission:

Re: Administrative Rulemaking, Statement of Purpose

I am writing this comment in an individual capacity as the department of Social Services has no official stand on this topic as yet.

I believe that the dropping of the description from the statement of reasons of the public problem, administrative problem, or other condition or circumstance that the regulations are intended to address is a mistake. I, and this department, have always interpreted this requirement as the public's threshold introduction so that the readers will know whether or not the regulations are of concern, unfortunately this is not necessarily the interpretation of others. It may be that instead of using this subdivision as the "mission statement" of a regulations package, some agencies repeat the problem the regulations address at each separate regulation change proposed.

This subdivision (Gov't Code 11346.2(b)) is best used to tell the public what the regulations are about. It may need to be rewritten to make it clear that the agency is only required to state the impetus for the regulatory action once. This would mean that there would only be one description for each set of regulations promulgated. That is how our agency now interprets this subdivision. An agency that was adopting an entire new chapter of regulations would only state the problems or circumstances for all the regulations once. Then the specific purpose and rationale for each regulation would come under the introductory "mission statement" of the package. For instance if the problem is that children are drowning in unfenced swimming pools, the problem addressed would be how to make swimming pools inaccessible to children. That a specific regulation requires a fence and another permits a cover could be discussed in the description, but it would be required in the specific purpose to show why a fence or cover was chosen. That children were drowning and there was a necessity to make swimming pools inaccessible would be part of the description of the problem and would not be repeated in each specific purpose section.

If you have any question please contact me at this e-mail or (916) 654-0861.

James D. Simon  
Staff Counsel  
California Department of Social Services



**CALIFORNIA  
NURSES  
ASSOCIATION**

Shaping Tomorrow's Health Care

February 27, 1997

Nathaniel Sterling, Executive Secretary  
California Law Revision Commission  
4000 Middlefield Road, Room D-1  
Palo Alto, CA 94303-4739

**RE: Memorandum 97-13 Administrative Rulemaking Revisions**

Dear Mr. Sterling:

On behalf of the California Nurses Association (CNA) a professional association that represents 27,000 Registered Nurses statewide, I submit the following comments regarding Memorandum 97-13.

**Text of Regulation:**

We are neutral on the position that the text of the regulation be printed in plain English verses the eighth grade standard. However, strongly believe that the full text of the regulation should be published both in hard copy and electronically.

**Initial Statement of Reasons:**

We believe that a statement of the public problem should continue to be published in the statement of reason. This is extremely beneficial when one must research the intent and interpretation of a regulation. We agree with the NOCALL position that requiring agencies to explain their actions is not an unreasonable burden when contrasted with the interest of the regulated public.

We are supportive of eliminating duplicative effort by allowing agencies to refer to items that have not changed.

**Small Business Provisions:**

Presently, we are neutral to the recommendations of the staff regarding small business.

**Electronic Communications:**

We are in support of electronic communications as it relates to the rulemaking process. However, we are not blind to the problems it poses, primarily the lack of standardized access to the "information superhighway". To that end, we

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**Memorandum 97-13**

Nathaniel Sterling

February 27, 1997

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are supportive of the staff's recommendations regarding electronic communications.

**Public Hearing:**

We are strongly opposed to the proposal that would allow an agency to cancel a hearing if it requests notice from any person wishing to be heard and no person responds to the request. We echo the sentiments of NOCALL that it places an unreasonable burden on the regulated public to request a hearing. Additionally, I have attended many public hearings, not intending to speak, but solely to monitor the activities of interested parties and to build coalitions amongst the groups. Public hearings play a vital part in participating in governmental process, thus it is important that the status quo be maintained with regard to public hearings.

**One-year Rule:**

We are in support of permitting the OAL to grant an extension of the one year rule upon a showing of good cause.

**Additional Comments:**

Our primary concern is that the meaningful participation of the regulated public in the rulemaking process is being threatened. We are adamantly opposed to any actions by the Commission that would result in a decrease, no matter how slight, of the public's input into the rules and regulations that we must live by.

Thank you for the opportunity to participate in this important process. If you have any questions regarding the above, I can be reached at (916) 446-5019, ext. 15.

Sincerely,



Shannon Sutherland, RN, JD.  
Regulatory Policy Specialist

cc: Rose Ann DeMoro, CNA Executive Director  
Hedy Dumpel, RN, JD, CNA Director of Nursing Practice  
Jill Furillo, RN, CNA Director of Government Relations