

CALIFORNIA LAW REVISION COMMISSION

TENTATIVE RECOMMENDATION

Administrative Rulemaking

April 1999

This tentative recommendation is being distributed so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Any comments sent to the Commission will be a part of the public record and will be considered at a public meeting when the Commission determines the provisions it will include in legislation the Commission plans to recommend to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made in the tentative recommendation.

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN July 16, 1999.

The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739
650-494-1335 FAX: 650-494-1827

SUMMARY OF TENTATIVE RECOMMENDATION

The California Law Revision Commission recommends a number of changes to the rulemaking provisions of the Administrative Procedure Act to improve the efficiency of the rulemaking process while preserving the important benefits it provides. The proposed law includes:

- (1) A provision authorizing, and in some cases requiring, the use of electronic communications in the rulemaking process.
- (2) Refinements to the exceptions to the rulemaking requirements.
- (3) Minor improvements to the rulemaking procedure.

This recommendation was prepared pursuant to Resolution Chapter 91 of the Statutes of 1998.

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ADMINISTRATIVE RULEMAKING

The rulemaking provisions of the Administrative Procedure Act (APA) govern the adoption, publication, review, and use of state agency regulations.¹ These provisions serve important goals. They provide the public with notice and an opportunity to comment on rules that affect them before the rules become effective, reduce needless regulation, and improve the quality of regulations that are adopted.

However, the rulemaking procedures are complex and impose substantial costs and delays on rulemaking agencies. Where these procedures can be simplified without compromising the goals of the APA, they should be. The California Law Revision Commission recommends a number of changes to the APA rulemaking provisions to improve the efficiency of the regulatory process without compromising the important benefits it provides.²

ELECTRONIC COMMUNICATIONS

Electronic communications can significantly increase the efficiency of the rulemaking process. Delivery of rulemaking notices by email and Internet publication of rulemaking documents would be quicker and less expensive than delivery by regular mail or publication in the print media. The proposed law authorizes the use of electronic communication in the rulemaking process (where the recipient has consented to electronic communication) and requires agencies with websites to publish rulemaking notices on their websites.³ Website publication supplements other required forms of publication.

EXCEPTIONS TO RULEMAKING REQUIREMENTS

The APA rulemaking requirements are subject to a number of exceptions.⁴ It is important that these exceptions be carefully crafted to strike the proper balance between agency efficiency and public involvement. To that end, the proposed law makes a number of changes relating to exceptions.

1. Gov't Code §§ 11340-11359.

2. As an aid to understanding the proposed changes, the entire rulemaking chapter is set out in the proposed legislation section of this report. Sections that would not be added, amended, or repealed under the proposed law are indicated as "unchanged."

3. See proposed Gov't Code § 11340.8.

4. To improve their accessibility, a number of these exceptions have been collected in a single section. See proposed Gov't Code § 11340.9.

1 **Individual Advice**

2 In *Tidewater Marine Western, Inc. v. Bradshaw* the California Supreme Court
3 noted an exception to the rulemaking procedures where agency advice is issued
4 to an individual.⁵ In general, this makes sense. If a member of the public asks an
5 agency for advice on how the agency interprets or applies the law, the agency
6 should be able to provide advice to that person, without the substantial delay
7 that would be involved in adopting a regulation.⁶ However, the exception
8 described in *Tidewater* is too broad and could be misused by an agency seeking
9 to circumvent the APA rulemaking requirements. The proposed law would add an
10 express exception to the rulemaking requirements for agency advice issued to a
11 person who has requested advice.⁷ In order to avoid misuse of the exception, the
12 effect and availability of such advice would be carefully limited, as follows:

- 13 • Advice can only be given to a person who has requested the advice.
14 Unsolicited or generally distributed advice would not fall within the
15 exception.
- 16 • A request for advice may not be made by an employee or officer of the
17 agency issuing the advice.⁸
- 18 • Advice issued under the exception does not bind the person requesting
19 the advice and is entitled to no deference from a reviewing court.

20 **Restatement or Summary of Prior Adjudicative Decisions and Individual Advice**

21 The *Tidewater* opinion also stated:

22 If an agency prepares a policy manual that is no more than a restatement or
23 summary, without commentary, of the agency's prior decisions in
24 specific cases and its prior advice letters, the agency is not adopting
25 regulations.⁹

5. See *Tidewater Marine Western, Inc. v. Bradshaw*, 14 Cal. 4th 557, 571, 59 Cal. Rptr. 2d 186, 194 (1996).

6. There are, of course, other means by which an agency can lawfully convey advice to the public. An adjudicative decision that conveys useful information can be designated as a precedent decision and made available to the public. See Gov't Code § 11425.60. An interested member of the public can request a declaratory decision from the agency to explain how the law would apply to particular facts. See Gov't Code § 11465.20. Assuming enactment of the advisory interpretation procedure recommended by the Commission, an agency could use a streamlined notice and comment procedure to publish a nonbinding interpretation of a law that it enforces or administers. See *Administrative Rulemaking: Advisory Interpretations*, 28 Cal. L. Revision Comm'n Reports 657 (1998). However, these alternatives are relatively formal and time-consuming and would not allow an agency to provide prompt informal advice to a member of the public requesting such advice.

7. See proposed Gov't Code § 11340.9(e) and the proposed amendment to Section 11343 (deleting subdivision (a)(3) as superfluous).

8. This is to avoid the promulgation of internal policies by means of "advice" to subordinates.

9. *Tidewater*, 14 Cal. 4th at 571, 59 Cal. Rptr. 2d at 194-95.

1 This position is problematic. An adjudicative decision is exempt from rulemaking
2 requirements because it relates to specific facts and is not a rule of general appli-
3 cability. However, an agency restatement or summary of its adjudicative decisions
4 may state a rule that the agency intends to be generally applicable. Such a
5 restatement or summary is itself quasi-legislative and should be adopted as a regu-
6 lation.¹⁰ Similarly, the exception for individual advice is based on the fact that the
7 advice is directed to a specific person. If an agency restates or summarizes such
8 advice in a policy manual intended to provide guidance to the public, the advice
9 serves a quasi-legislative function.

10 The proposed law makes clear that the prohibition on the use or issuance of a
11 regulation that has not been properly adopted applies to a policy manual that
12 restates or summarizes an agency's prior decisions and advice.¹¹ **However, the**
13 **Commission is concerned that some beneficial agency practices would be**
14 **prohibited by this provision, and is particularly interested in receiving**
15 **public comment on this question.**

16 **Internal Management Rules**

17 Under existing law, an agency rule that relates only to the internal management
18 of the agency is excluded from the definition of "regulation."¹² This is appropri-
19 ate. An agency should be able to order its own internal operations without first
20 soliciting public comment and publishing a rule in the California Code of
21 Regulations. However, the internal management exception has been construed
22 narrowly by the courts — a rule is not eligible for the exception if it has any
23 effect on a person outside the agency¹³ or involves "a matter of serious conse-
24 quence involving an important public interest."¹⁴ Most internal management
25 rules will have at least some effect on persons outside the agency, and the public
26 can be said to have an important interest in the fairness and efficiency of state
27 agency operations generally.¹⁵ This means that the exception will only apply to
28 the most trivial internal management rules.

10. Alternatively, an agency that wishes to recognize the general applicability of an adjudicative decision can designate it as a precedent decision. See Gov't Code § 11425.60. Section 11425.60 requires that an agency maintain an index of the significant legal and policy determinations made in its precedent decisions. The designation and indexing of precedent decisions is not subject to the rulemaking requirements of the APA. See Gov't Code § 11425.60(b).

11. See proposed amendment to Gov't Code § 11340.5(a).

12. See Gov't Code § 11342(g).

13. See, e.g., *Grier v. Kizer*, 219 Cal. App. 3d 422, 435-38, 268 Cal. Rptr. 244 (1990) ("The internal management exception to the APA is narrow and is inapplicable where a rule is to ... affect persons subject to regulation by the agency").

14. See *Poschman v. Dumke*, 31 Cal. App. 3d 932, 943, 107 Cal. Rptr. 596 (1973) (public university tenure policy is a matter of serious consequence involving an important public interest and is therefore not a matter of internal management).

15. Such a broad reading of what constitutes an "important public interest" may be warranted. The Office of Administrative Law recently determined that an agency policy requiring employees to verify an illness in order to use sick leave in some circumstances was not a matter of internal management because it impli-

1 The proposed law changes the scope of the internal management exception
2 slightly. Instead of excepting only internal management rules that have no effect
3 on a person outside the agency, it excepts internal management rules that do not
4 significantly affect the legal rights or obligations of any person.¹⁶ This means that
5 an internal management rule with only an insignificant effect on a person's rights
6 or obligations would not be required to be adopted as a regulation. This also
7 means that a rule significantly affecting the rights or obligations of a state
8 employee or a person within the custody of the agency would not fall within the
9 internal management exception and would need to be adopted as a regulation.

10 **Agency Rules That Should Not Be Disclosed Publicly**

11 Under existing law, there is no exception to the rulemaking requirements for
12 agency audit criteria, settlement guidelines, or other similar rules that should not
13 be disclosed to the public. This means that an agency must provide public notice
14 of the substance of such a rule before it can be used by the agency. This problem
15 is addressed by the proposed law, which adds an exception for the following:¹⁷

16 A rule that establishes criteria or guidelines to be used by the staff of an
17 agency in performing audits, investigations, or inspections, settling
18 commercial disputes, negotiating commercial arrangements, or in the
19 defense, prosecution, or settlement of cases, if disclosure of the criteria or
20 guidelines would do any of the following:

21 (1) Enable law violators to avoid detection.

22 (2) Facilitate disregard of requirements imposed by law.

23 (3) Give a clearly improper advantage to persons who are in an adverse
24 position to the state.

25 This exception is consistent with case law holding that disclosure of agency
26 audit materials is contrary to the public interest and not required under the Public
27 Records Act where the disclosure would facilitate evasion of the law.¹⁸

28 **Only Tenable Interpretation**

29 An agency should not be required to adopt a regulation in order to express its
30 interpretation of law where there is only one legally tenable interpretation of that

cated two important public interests: "(1) having fair and appropriate standards governing the suspension, demotion, and dismissal of public employees and (2) protecting the privacy of individuals' medical history and records." See 1998 OAL Determination No. 36, at 15. The important public interests identified in that determination are nearly as broad as the public's general interest in the fair and efficient operation of government.

16. See proposed Gov't Code § 11340.9(d).

17. See proposed Gov't Code § 11340.9(f). This exception is drawn from 1981 Model State APA § 3-116(2).

18. "It is an unassailable proposition that disclosure of law enforcement materials which when revealed assist in thwarting and circumventing the law is not in the public interest." *Eskaton Monterey Hosp. v. Meyers*, 134 Cal. App. 3d 788, 793, 184 Cal. Rptr. 840 (1982).

1 law. This reflects the current practice of the Office of Administrative Law in
2 determining what agency statements are regulations subject to the rulemaking
3 requirements.¹⁹ The proposed law adds an exception to the rulemaking require-
4 ments for an agency statement that is the only legally tenable interpretation of a
5 law.²⁰

6 **Agency-Specific Exemptions**

7 The Commission is preparing a list of statutory exemptions applicable to specific
8 agencies. The list will be printed in the California Regulatory Notice Register and
9 will also be available on request from the Commission.²¹ The Commission would
10 like to receive public comment as to problems presented by any of the listed
11 exemptions.

12 **RULEMAKING PROCEDURE**

13 The APA requires that regulations be adopted under a detailed public notice
14 and comment procedure.²² The proposed law contains the following revisions
15 and clarifications of that process:

16 **Pre-Adoption Public Input**

17 Under existing law, an agency may confer informally with interested persons in
18 the process of developing a proposed regulation. This useful practice is expressly
19 authorized in the proposed law.²³

20 **Effective Period of Notice of Proposed Action**

21 Existing law provides that a notice of proposed action is effective for one
22 year.²⁴ If the proposed action has not been completed in that time, the adopting
23 agency must issue a new notice. In some cases a proposed action may take more
24 than a year to complete (e.g., where voluminous comments have been received
25 and must be summarized and responded to). The proposed law would allow the
26 Director of the Office of Administrative Law to extend the effective period of a
27 notice of proposed action for good cause.²⁵

19. See, e.g., 1993 OAL Determination No. 1, at 36 (“[T]he challenged rule would not constitute a ‘regulation’ if it were ... the only tenable interpretation of the law.”).

20. See proposed Gov’t Code § 11340.9(g).

21. The list will also be available for download from the Commission’s website (www.clrc.ca.gov).

22. Gov’t Code §§ 11346-11347.3.

23. See proposed amendment to Gov’t Code § 11346.

24. Gov’t Code § 11346.4(b).

25. See proposed amendment to Gov’t Code § 11346.4(b).

1 **Preliminary Agency Determinations**

2 Existing law requires an agency’s notice of proposed action and the
3 accompanying initial statement of reasons to include preliminary agency determi-
4 nations on a number of matters that can only be determined definitively after
5 public comment and hearing have occurred.²⁶ The statute should be revised to
6 make clear that these preliminary determinations may be made on the basis of the
7 agency’s belief.²⁷

8 **Regulation that Imposes Report Requirement on Business**

9 To adopt a regulation that will impose a report requirement on a business, an
10 agency must make a finding that this is necessary for the health, safety, or welfare
11 of the people of the state.²⁸ However, the statute does not indicate where the
12 finding is to be reported.

13 The proposed law makes clear that the finding is to be included in the
14 rulemaking notice.²⁹ This will put the public on notice that the proposed
15 regulation will require businesses to file a report and will allow an interested
16 person to comment on the required finding.

17 **Plain English Requirement**

18 Existing law requires that a regulation that will affect small business³⁰ must be
19 drafted in plain English or a plain English summary of the regulation must be
20 provided,³¹ and the informative digest prepared by the agency concerning the
21 regulation must include a plain English policy statement overview explaining its
22 objectives.³² These are beneficial provisions that should be extended to all
23 regulations, not just those affecting small business. Other provisions applying to
24 regulations that affect small business have also been extended to apply to all
25 regulations.³³

26 The statutory definition of “plain English” is difficult to apply.³⁴ The proposed
27 law would define plain English as language that satisfies the “clarity” standard,

26. See, e.g., Gov’t Code §11346.2(b)(5) (agency finding that regulation will not have a significant adverse economic impact on business).

27. See proposed amendments to Gov’t Code §§ 11346.2(b)(5), 11346.5(a)(7)-(8), (11).

28. Gov’t Code § 11346.3(c).

29. See proposed Gov’t Code § 11346.5(a)(11).

30. The definition of “small business” depends on income figures that have not been adjusted since 1979. See proposed Section 11342.600. **The Commission would like to receive input on whether these amounts should be increased and if so, by how much.**

31. Gov’t Code § 11346.2(a)(1).

32. Gov’t Code § 11346.5(a)(3)(B).

33. See proposed amendments to Gov’t Code §§ 11346.2(b)(4)(B), 11346.9(a)(5).

34. Gov’t Code § 11342(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.”).

1 i.e., that is easily understood by persons who would be directly affected by it.³⁵
2 Existing law provides an enforcement mechanism for such a requirement by
3 means of review by the Office of Administrative Law.³⁶

4 **Public Hearing**

5 Existing law provides for a public hearing on a proposed regulation.³⁷ An
6 agency may elect not to hold a public hearing and instead receive written com-
7 ments, but on timely demand by an interested person the agency must schedule a
8 public hearing.³⁸ If a hearing is held, the agency must permit public comment that
9 is “either oral or in writing, or both.”³⁹ A literal reading of this language suggests
10 that an agency may preclude oral comment, and in fact this has occurred.⁴⁰

11 The proposed law revises the statute to make clear that oral testimony must be
12 allowed at a public hearing, subject to reasonable agency limitations.⁴¹ This is
13 consistent both with the general scheme of the rulemaking statute and with its
14 purpose to promote effective public involvement in the rulemaking process.

15 **Response to Comments**

16 An agency is required to respond to “each objection” made concerning a pro-
17 posed regulation.⁴² A response is only required, however, if the comment is
18 directed at the proposed action or the procedures followed by the agency.⁴³
19 Agency practice under these rules has been to aggregate and respond to repeti-
20 tive comments as a group and to summarily dispose of comments that are irrele-
21 vant. The proposed law specifically recognizes this method of dealing with repeti-
22 tive or irrelevant comments.⁴⁴

23 **Rulemaking File**

24 *Public inspection of file.* The statutes governing the rulemaking file imply that
25 the file is not available to the public until the rulemaking proceeding, and the
26 record of that proceeding, are complete.⁴⁵ It is appropriate that the public be able
27 to view the contents of the rulemaking file from the time a regulation is proposed.
28 A major purpose of the rulemaking statute is to promote meaningful public partic-

35. See Gov’t Code § 11349(c) (clarity standard for review of regulations).

36. Gov’t Code §§ 11349-11349.6.

37. Gov’t Code §§ 11346.4(a), 11346.5(a)(16), 11346.8, 11347.3(a)(8), 11349.4(a), 11349.6(d).

38. Gov’t Code § 11346.8(a).

39. *Id.*

40. See letter from John D. Smith, Director of Office of Administrative Law, to California Law Revision Commission (May 24, 1996), at 13-14 (on file with California Law Revision Commission).

41. See proposed amendment to Gov’t Code § 11346.8(a).

42. Gov’t Code § 11346.9(a)(3)

43. *Id.*

44. See proposed amendment to Gov’t Code § 11346.9(a)(3).

45. See Gov’t Code § 11347.3.

1 ipation in agency rulemaking; for this purpose it is helpful to have the rulemaking
2 file available throughout the rulemaking process. The proposed law makes clear
3 that the rulemaking file is available for public inspection at all times during the
4 rulemaking proceedings.⁴⁶

5 *Documents added to file.* Existing law provides for addition of documents to
6 the rulemaking file after the close of the public hearing or comment period,⁴⁷
7 subject to the agency making “adequate provision” for further public com-
8 ment.⁴⁸ The proposed law supplements these provisions with specific procedural
9 rules,⁴⁹ based on existing practice.⁵⁰ The proposed law also authorizes the addi-
10 tion of material to the rulemaking file during administrative review of a proposed
11 regulation, so long as doing so does not violate other limitations on the addition
12 of material to the file.⁵¹ This allows an agency to correct inadvertent omissions to
13 the rulemaking file, without requiring disapproval of the rule by the Office of
14 Administrative Law and resubmission of the corrected file.

15 *Final statement of reasons.* Despite the general statutory limitations on adding
16 documents to the rulemaking file after the close of public comment, the law
17 requires an agency to add a final statement of reasons and updated informative
18 digest.⁵² The proposed law resolves this inconsistency by making clear that the
19 addition of these materials is an exception to the limitation on adding material to
20 the rulemaking file after public comment.⁵³

21 **Application of Requirements to Repeals**

22 Some APA provisions appear to treat the repeal of regulations differently than
23 the adoption or amendment of regulations.⁵⁴ Such a distinction does not make
24 sense. While it is true that a repeal cannot be used to create new legal require-
25 ments, a repeal may nonetheless have a substantive effect. For example, a repeal
26 might be used to broaden the scope of an existing requirement, by eliminating an
27 exemption. Or a repeal might eliminate a restriction on one group that is intended
28 to protect another group. The protections of the rulemaking procedures should
29 apply to these changes just as they would to the addition or amendment of a

46. See proposed amendment to Gov’t Code § 11347.3(a).

47. Gov’t Code § 11346.9(a)(1).

48. Gov’t Code § 11346.8(d).

49. See proposed Gov’t Code § 11347.1.

50. 1 Cal. Code Reg. § 45.

51. See proposed Gov’t Code § 11349.2.

52. Compare Gov’t Code § 11346.8(d) with § 11347.3(a)(2).

53. See proposed amendment to Gov’t Code § 11346.8(d).

54. For example, Section 11346.9(a)(1) requires that an agency provide time for additional public comment if relying on new data in adopting or amending a regulation. There is no clear reason that this requirement should be limited to adoption and amendment.

1 regulation. The proposed law revises a number of rulemaking requirements so that
2 they apply to a proposed repeal as well as a proposed adoption or amendment.⁵⁵

3 **Emergency Rulemaking**

4 The APA provides a procedure for the expedited adoption of temporary
5 “emergency regulations” where such regulations are immediately required to
6 preserve the public peace, health and safety, or general welfare.⁵⁶ Emergency
7 regulations are valid for 120 days. This provides time for the agency to adopt a
8 permanent regulation to replace the emergency regulation. The 120-day limit was
9 added in 1957, when rulemaking procedures were less complex than they are
10 today.⁵⁷ Under existing law, 120 days may be insufficient time to adopt a
11 permanent regulation. The proposed law increases the effective period of an
12 emergency regulation to 180 days.⁵⁸

13 The proposed law also makes minor technical changes in the emergency regu-
14 lation provisions.⁵⁹

15 ADMINISTRATIVE REVIEW OF REGULATIONS

16 Proposed regulations must be reviewed and approved by the Office of
17 Administrative Law before they become effective.⁶⁰ This review ensures that the
18 regulation satisfies specified standards⁶¹ and was adopted in compliance with
19 procedural requirements.

20 **Necessity Standard**

21 *Clarification of standard.* Under the necessity standard, an agency proposing
22 a regulation must demonstrate that the regulation is “necessary.” The proposed
23 law clarifies the meaning of this standard by requiring that a proposed regulation
24 be necessary “to effectuate the purpose of the statute, court decision, or other
25 provision of law that the regulation implements, interprets, or makes specific....”⁶²

55. See proposed amendments to Gov’t Code §§ 11346.3 (assessment of economic impact), 11346.5(a)(7)-(8) (assessment of economic impact), 11346.9(a)(1) (reliance on new data in updated informative digest), 11346.9(a)(2) (assessment of local agency mandate), 11349.1(a) (administrative review of regulations), 11350(a) (judicial review of regulations), 11350.3 (judicial review of regulations).

56. Gov’t Code § 11346.1(b).

57. 1957 Cal. Stat. ch. 1919, § 1.

58. See proposed amendment to Gov’t Code § 11346.1(e).

59. See proposed amendments to Gov’t Code §§ 11346.1(e) (underinclusive references corrected), (h) (unclear provision redrafted without substantive change), 11349.6(a) (underinclusive reference corrected).

60. Gov’t Code §§ 11349-11349.6.

61. The standards for review of a proposed regulation are: necessity, authority, clarity, consistency, reference, and nonduplication. Gov’t Code § 11349.1.

62. See proposed amendment to Gov’t Code § 11349(a).

1 This change is consistent with other provisions of the APA that relate to the
2 necessity of a regulation.⁶³

3 *Scope of standard's application.* Under existing law, an agency must demon-
4 strate the necessity of “each provision” of a proposed regulation.⁶⁴ The pro-
5 posed law refines the scope of necessity review, providing that an agency
6 proposing a regulation must demonstrate the necessity of “major provisions of
7 the regulation and any specific provisions of the regulation that have been chal-
8 lenged by public comment.”⁶⁵ This provides focused and efficient review of the
9 need for a regulation in general and of the need for specific controversial provi-
10 sions.

11 *Evidence supporting determination.* The proposed law authorizes an agency
12 to provide its rationale for the necessity of a regulation in lieu of facts or expert
13 opinion showing the need for the regulation. To do so, the agency must explain
14 why, as a practical matter, factual evidence or expert opinion cannot be pro-
15 vided.⁶⁶ This rule recognizes that some policy decisions depend on the expert
16 judgment of the agency and cannot be justified with factual evidence. For exam-
17 ple, where an agency anticipates a problem that has not yet occurred, it may be
18 difficult or impossible to find data relating to that problem. In such a case, the
19 agency must act on its informed assessment of the situation.

20 **Review Periods**

21 The time period for administrative review of a proposed regulation is 30 work-
22 ing days. In some cases, this may not be sufficient time to review a proposed regu-
23 lation. The proposed law authorizes an extension of 15 working days where the
24 Director of the Office of Administrative Law certifies that more time is required
25 because of the length or complexity of the proposed regulation.⁶⁷

26 The period for review of a proposal to make an emergency regulation perma-
27 nent is 30 days.⁶⁸ This is inconsistent with the 30 working day period for review
28 of a regulation generally.⁶⁹ This inconsistency does not make sense — in each
29 case the Office of Administrative Law is reviewing a proposed permanent regula-

63. See Gov't Code §§ 11342.2 (regulation not valid unless “reasonably necessary to effectuate the purpose of statute” authorizing the regulation), 11350 (court may find regulation invalid if agency 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).

64. See 1 Cal. Code Regs. § 10(b).

65. See proposed amendment to Gov't Code § 11349(a). A provision is “challenged” if a public comment opposes the provision or asserts that it is unnecessary, and provides a specific reason for the opposition or assertion. *Id.*

66. See proposed Gov't Code § 11349(a)(1).

67. See proposed amendment to Gov't Code §§ 11349.3, 11349.6.

68. Gov't Code § 11349.6(d).

69. Gov't Code § 11349.3.

1 tion that has been adopted under the full rulemaking procedure. The proposed
2 law eliminates the inconsistency by increasing the period for review of a proposal
3 to make permanent an emergency regulation to 30 working days.⁷⁰

4 JUDICIAL REVIEW OF REGULATIONS

5 In a judicial proceeding to review the validity of a regulation, the record of
6 review is limited to the contents of the rulemaking file prepared pursuant to
7 Government Code Section 11347.3.⁷¹ This is too restrictive. It precludes review
8 of essential materials, such as the statement required when adopting an emer-
9 gency regulation.⁷² It can also preclude review of evidence showing that the
10 agency did not comply with the rulemaking procedures in adopting the regula-
11 tion. For example, proof that an agency failed to include written public comments
12 in a rulemaking file requires review of the excluded comments. Also, where it is
13 asserted that an agency statement is an invalid “underground regulation” (i.e., it
14 should have been adopted under the APA), the court will need to consider the
15 text of the purported underground regulation in order to determine whether it is,
16 in fact, a regulation subject to the APA. The proposed law addresses this problem
17 by expanding the scope of the record on review to include materials necessary to
18 that review.⁷³

19 MISCELLANEOUS TECHNICAL IMPROVEMENTS

20 The proposed law would make the following technical improvements to exist-
21 ing law:

- 22 (1) Some provisions that are awkwardly drafted or contain technical
23 errors are revised.⁷⁴
- 24 (2) The definition of “agency” is revised to provide that “agency” has
25 the same meaning as “state agency.” This is not clear under existing
26 law.⁷⁵
- 27 (3) The name of the “California Regulatory Code Supplement” is
28 changed to the “California Code of Regulations Supplement.”⁷⁶ This
29 is consistent with the name of the “California Code of Regulations,”
30 which it supplements.

70. See proposed amendment to Gov’t Code § 11349.6(d).

71. Gov’t Code § 11350(b)(2).

72. This statement is not part of the rulemaking file. See Gov’t Code § 11346.1(a) (emergency regula-
tions are not subject to Section 11347.3).

73. See proposed Gov’t Code § 11350(d).

74. See proposed amendment to Gov’t Code §§ 11343.4(a) (erroneous reference), 11344.1(a)(4)
(ambiguity), 11347.3(b)(9) (awkward), 11349(b)-(f) (awkward), 11350(a) (ambiguity).

75. See proposed Gov’t Code § 11342.520.

76. See proposed amendment to Gov’t Code § 11344.

- 1 (4) The long definition section⁷⁷ is replaced with an article, divided into
2 individual sections, setting out the definitions in alphabetical order.⁷⁸
3 (5) Elements of definitions that are actually substantive provisions are
4 recast as such.⁷⁹
5 (6) Minor changes are made to codify existing beneficial practices.⁸⁰
6 (7) An entirely redundant section is repealed.⁸¹
7 (8) Duplicative requirements relating to the contents of the initial
8 statement of reasons are unified.⁸²
9 (9) Technical defects relating to the adoption of regulations under
10 Sections 3373 and 8054 of the Financial Code are corrected.⁸³
11 (10) Technical defects in provisions relating to the adoption of building
12 standards are corrected.⁸⁴

77. Gov't Code § 11342.

78. See proposed Gov't Code §§ 11342.510-11342.600.

79. See proposed amendments to Gov't Code §§ 11342(a) (agencies not subject to chapter), (g) (exceptions for forms, internal management decisions, and legal rulings of counsel of the Franchise Tax Board and the State Board of Equalization), 11346.3(b)(2) (agencies not subject to economic impact analysis requirement).

80. See proposed amendments to Gov't Code §§ 11344.2 (codifying OAL control over form of regulatory publications), 11353 (requiring changes to State Water Resources Control Board policies, plans, and guidelines to be set out in strike-through and underscore.)

81. Gov't Code § 11346.54. *Cf.* Gov't Code §§ 11346.3(b) (economic impact assessment), 11346.5(a)(10) (publication of economic impact assessment in notice of proposed action).

82. See, e.g., Gov't Code § 11346.2(b)(1) & (2).

83. See proposed amendments to Fin. Code § 3373; Gov't Code §§ 11343.4(b), 11346.1(a). These changes eliminate redundant provisions and resolve inconsistencies between what were formerly parallel provisions.

84. See proposed Gov't Code § 11342.530 ("building standard" defined to simplify drafting). See proposed amendment to Gov't Code § 11356 (a) (redrafted for clarity).

PROPOSED LEGISLATION

☞ **Note.** As an aid to understanding the proposed changes, the entire rulemaking chapter is set out below. Sections that would not be added, amended, or repealed under the proposed law are indicated as “unchanged.”

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1 PROPOSED LEGISLATION

2 CHAPTER 3.5. ADMINISTRATIVE REGULATIONS AND RULEMAKING

3 Article 1. General

4 **Gov't Code § 11340 (unchanged). Legislative finding and declaration**

5 11340. The Legislature finds and declares as follows:

6 (a) There has been an unprecedented growth in the number of administrative
7 regulations in recent years.

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

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

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

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

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

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

28 **Gov't Code § 11340.1 (unchanged). Legislative intent**

29 11340.1. (a) The Legislature therefore declares that it is in the public interest to
30 establish an Office of Administrative Law which shall be charged with the orderly
31 review of adopted regulations. It is the intent of the Legislature that the purpose
32 of such review shall be to reduce the number of administrative regulations and to
33 improve the quality of those regulations which are adopted. It is the intent of the
34 Legislature that agencies shall actively seek to reduce the unnecessary regulatory
35 burden on private individuals and entities by substituting performance standards
36 for prescriptive standards wherever performance standards can be reasonably
37 expected to be as effective and less burdensome, and that this substitution shall
38 be considered during the course of the agency rulemaking process. It is the intent

1 of the Legislature that neither the Office of Administrative Law nor the court
2 should substitute its judgment for that of the rulemaking agency as expressed in
3 the substantive content of adopted regulations. It is the intent of the Legislature
4 that while the Office of Administrative Law will be part of the executive branch
5 of state government, that the office work closely with, and upon request report
6 directly to, the Legislature in order to accomplish regulatory reform in California.

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

10 **Gov't Code § 11340.2 (unchanged). Office of Administrative Law**

11 11340.2. (a) The Office of Administrative Law is hereby established in state
12 government. The office shall be under the direction and control of an executive
13 officer who shall be known as the director. There shall also be a deputy director.
14 The director's term and the deputy director's term of office shall be coterminous
15 with that of the appointing power, except that they shall be subject to
16 reappointment.

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

20 **Gov't Code § 11340.3 (unchanged). Personnel**

21 11340.3. The director may employ and fix the compensation, in accordance
22 with law, of such professional assistants and clerical and other employees as is
23 deemed necessary for the effective conduct of the work of the office.

24 **Gov't Code § 11340.4 (unchanged). Authority of Office of Administrative Law**

25 11340.4. (a) The office is authorized and directed to do the following:

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

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

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

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

36 **Gov't Code § 11340.5 (amended). Use of regulations**

37 SEC. _____. Section 11340.5 of the Government Code is amended to read:

38 11340.5. (a) No state agency shall issue, utilize, enforce, or attempt to enforce
39 any guideline, criterion, bulletin, manual, instruction, order, standard of general

1 application, or other rule, which is a regulation as defined in ~~subdivision (g) of~~
2 ~~Section 11342~~ Section 11342.590, unless the guideline, criterion, bulletin, manual,
3 instruction, order, standard of general application, or other rule has been adopted
4 as a regulation and filed with the Secretary of State pursuant to this chapter. For
5 the purposes of this section, “manual” includes a policy manual that restates or
6 summarizes the agency’s adjudicative decisions or statements made by the
7 agency pursuant to subdivision (e) of Section 11340.9.

8 (b) If the office is notified of, or on its own, learns of the issuance, enforcement
9 of, or use of, an agency guideline, criterion, bulletin, manual, instruction, order,
10 standard of general application, or other rule that has not been adopted as a
11 regulation and filed with the Secretary of State pursuant to this chapter, the office
12 may issue a determination as to whether the guideline, criterion, bulletin, manual,
13 instruction, order, standard of general application, or other rule, is a regulation as
14 defined in ~~subdivision (g) of Section 11342~~ Section 11342.590.

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

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

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

19 (3) Publish its determination in the California Regulatory Notice Register within
20 15 days of the date of issuance.

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

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

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

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


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

33 (3) At issue in the proceeding is the question of whether the guideline, criterion,
34 bulletin, manual, instruction, order, standard of general application, or other rule
35 that is the legal basis for the adjudicatory action is a regulation as defined in
36 ~~subdivision (g) of Section 11342~~ Section 11342.590.

37 **Comment.** Section 11340.5(a) is amended to clarify that the prohibition on issuance or use
38 of a regulation unless it has been adopted pursuant to this chapter applies to an agency
39 “manual” that contains a restatement or summary of the agency’s adjudicative decisions or
40 statements made pursuant to Section 11340.9(e). This contradicts a recent dictum of the
41 Supreme Court suggesting that there is a categorical exemption to the requirements of this
42 chapter for “a policy manual that is no more than a restatement or summary, without
43 commentary, of the agency’s prior decisions in specific cases and its prior advice letters”.
44 See *Tidewater Marine Western, Inc. v. Bradshaw*, 14 Cal. 4th 557, 571, 59 Cal. Rptr. 2d 186,

1 194-95 (1996). Subdivision (a) does not preclude an agency from compiling or indexing its
2 adjudicative decisions and statements made pursuant to Section 11340.9(e) to improve their
3 accessibility as public records. Neither does it affect the designation, compilation, indexing, or
4 citation of precedent decisions pursuant to Section 11425.60. See Section 11425.60(b)
5 (designation of precedent decision not rulemaking).

6 This section is also amended to correct references to the definition of “regulation” in
7 former Section 11342(g), which is continued in Section 11342.590.

8  **Note. The Commission is particularly interested in receiving public comment on the**
9 **appropriateness of the proposed change to subdivision (a).**

10 **Gov’t Code § 11340.6 (unchanged). Petition for adoption of regulation**

11 11340.6. Except where the right to petition for adoption of a regulation is
12 restricted by statute to a designated group or where the form of procedure for
13 such a petition is otherwise prescribed by statute, any interested person may
14 petition a state agency requesting the adoption, amendment, or repeal of a
15 regulation as provided in Article 5 (commencing with Section 11346). This
16 petition shall state the following clearly and concisely:

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

18 (b) The reason for the request.

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

20 **Gov’t Code § 11340.7 (unchanged). Response to petition**

21 11340.7. (a) Upon receipt of a petition requesting the adoption, amendment, or
22 repeal of a regulation pursuant to Article 5 (commencing with Section 11346), a
23 state agency shall notify the petitioner in writing of the receipt and shall within
24 30 days deny the petition indicating why the agency has reached its decision on
25 the merits of the petition in writing or schedule the matter for public hearing in
26 accordance with the notice and hearing requirements of that article.

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

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

36 (d) Any decision of a state agency denying in whole or in part or granting in
37 whole or in part a petition requesting the adoption, amendment, or repeal of a
38 regulation pursuant to Article 5 (commencing with Section 11346) shall be in
39 writing and shall be transmitted to the Office of Administrative Law for
40 publication in the California Regulatory Notice Register at the earliest practicable
41 date. The decision shall identify the agency, the party submitting the petition, the
42 provisions of the California Code of Regulations requested to be affected,

1 reference to authority to take the action requested, the reasons supporting the
2 agency determination, an agency contact person, and the right of interested
3 persons to obtain a copy of the petition from the agency.

4 **Gov't Code § 11340.8 (added). Electronic communication**

5 SEC. _____. Section 11340.8 is added to the Government Code, to read:

6 11340.8. (a) As used in this section, "electronic communication" includes
7 electronic transmission of written or graphical material by electronic mail,
8 facsimile, or other means, but does not include voice communication.

9 (b) Notwithstanding any other provision of this chapter that refers to mailing or
10 to oral or written communication:

11 (1) An agency may permit and encourage use of electronic communication, but
12 may not require use of electronic communication.

13 (2) An agency may make available in electronic form a document required by
14 this chapter, but shall not make that the exclusive means by which the document
15 or a copy of a document is made available.

16 (3) A communication required or authorized by this chapter, including a notice,
17 public comment, request, or petition, may be made electronically with the consent
18 of the recipient.

19 (c) An agency that maintains an Internet website or other similar forum for the
20 electronic publication or distribution of written material shall publish any public
21 notice required by this chapter on that website or other forum. For the purposes
22 of this subdivision, "public notice" means a notice that is required to be given by
23 an agency to persons who have requested notice of the agency's regulatory
24 actions. Publication under this subdivision is in addition to any other required
25 form of publication. This subdivision does not require an agency to establish or
26 maintain a website or other forum for the electronic publication or distribution of
27 written material.

28 (d) Nothing in this section precludes the office from requiring that the text of a
29 proposed regulation be submitted in electronic form.

30 **Comment.** Section 11340.8 is new. Subdivision (b) authorizes the use of electronic
31 communications in adopting a regulation under this chapter.

32 Subdivision (c) requires electronic publication of a rulemaking notice by an agency that
33 maintains a website or similar electronic communication forum. Provisions requiring a public
34 notice subject to this subdivision include Sections 11346.4 (notice of proposed action),
35 11346.8(a) (notice of hearing), 11346.8(b) (notice of continuance or postponement of
36 hearing), 11347.1 (notice of addition to rulemaking file).

37 **Gov't Code § 11340.9 (added). Exceptions**

38 SEC. _____. Section 11340.9 is added to the Government Code, to read:

39 11340.9. The requirements of this chapter do not apply to any of the following:

40 (a) An agency in the judicial or legislative branch of the state government.

41 (b) A legal ruling of counsel issued by the Franchise Tax Board or State Board
42 of Equalization.

1 (c) A form prescribed by a state agency or any instructions relating to the use of
2 the form, but this provision is not a limitation upon any requirement that a
3 regulation be adopted pursuant to this chapter when one is needed to implement
4 the law under which the form is issued.

5 (d) An agency rule concerning only the internal management of the agency that
6 does not significantly affect the legal rights or obligations of any person.

7 (e) An agency statement made to a specifically named person or group of
8 specifically named persons, other than an employee or officer of the agency, to
9 provide advice in response to a request for advice from that person or group of
10 persons. Advice issued under this subdivision does not bind the person
11 requesting the advice and is entitled to no judicial deference.

12 (f) An agency rule that establishes criteria or guidelines to be used by the staff
13 of an agency in performing audits, investigations, or inspections, settling
14 commercial disputes, negotiating commercial arrangements, or in the defense,
15 prosecution, or settlement of cases, if disclosure of the criteria or guidelines would
16 do any of the following:

17 (1) Enable law violators to avoid detection.

18 (2) Facilitate disregard of requirements imposed by law.

19 (3) Give a clearly improper advantage to persons who are in an adverse position
20 to the state.

21 (g) An agency interpretation of law that is the only legally tenable
22 interpretation of that law.

23 (h) A regulation that establishes or fixes rates, prices, or tariffs.

24 (i) A regulation that relates to the use of public works, including streets and
25 highways, when the effect of the regulation is indicated to the public by means of
26 signs or signals or when the regulation determines uniform standards and
27 specifications for official traffic control devices pursuant to Section 21400 of the
28 Vehicle Code.

29 **Comment.** Section 11340.9 is new. It collects various exemptions from the requirements of
30 this chapter.

31 Subdivision (a) continues former Section 11342(a) without substantive change.

32 Subdivisions (b)-(c) continue provisions of former Section 11342(g) without substantive
33 change.

34 Subdivision (d) continues the “internal management” exception to the definition of
35 “regulation” in former Section 11342(g), with two changes:

36 (1) Under prior law, the internal management exception did not apply to a rule that had
37 any effect on persons regulated by the agency. See, e.g., *Grier v. Kizer*, 219 Cal. App. 3d
38 422, 435-38, 268 Cal. Rptr. 244 (1990) (“The internal management exception to the APA is
39 narrow and is inapplicable where a rule is to ... affect persons subject to regulation by the
40 agency.”). Under subdivision (d) the internal management exception applies to a rule that
41 affects the public, so long as it does not significantly affect any person’s legal rights or
42 obligations.

43 (2) Under prior law, the internal management exception applied to a rule that affected only
44 the employees or officers of the agency unless the internal rule involved “a matter of serious
45 consequence involving an important public interest.” See *Poschman v. Dumke*, 31 Cal. App.
46 3d 932, 943, 107 Cal. Rptr. 596 (1973). Subdivision (d) does not differentiate between

1 persons regulated by the agency and the officers and employees of the agency. A significant
2 effect on the legal rights of any person bars application of the exception.

3 Subdivision (e) establishes an exception for advice issued to a specifically named person
4 who has requested the advice. Such advice is not binding on the recipient. However, the
5 issuing agency may be bound by its advice under principles of equitable estoppel. See *City of*
6 *Long Beach v. Mansell*, 3 Cal. 3d 462, 496-97, 91 Cal. Rptr. 23 (1970) (“The government
7 may be bound by an equitable estoppel in the same manner as a private party when the
8 elements requisite to such an estoppel against a private party are present and, in the
9 considered view of a court of equity, the injustice which would result from a failure to uphold
10 an estoppel is of sufficient dimension to justify any effect upon public interest or policy
11 which would result from the raising of an estoppel.”). See also Section 17 (“person”
12 defined).

13 While advice issued under this subdivision is not entitled to any deference by a court in
14 interpreting a provision of law that is the subject of the advice, this does not preclude a court
15 from independently reaching the same interpretive conclusion. Nor is the agency that issued
16 the advice precluded from advancing the same interpretation on its own merits.

17 If an agency receives multiple requests for the same advice, it should adopt a clarifying
18 regulation.

19 Subdivision (f) establishes a new exception for agency rules that should not be disclosed to
20 the public. It is drawn from 1981 Model State APA § 3-116(2).

21 Subdivision (g) establishes a new exception for an agency statement that is the only legally
22 tenable interpretation of a provision of law. This codifies the practice of the Office of
23 Administrative Law. See, e.g., 1993 OAL Determination No. 1 at 36 (“the challenged rule
24 would not constitute a ‘regulation’ if it were ... the only tenable interpretation of the law.”)

25 Subdivision (h) continues former Section 11343(a)(1) without substantive change.

26 Subdivision (i) continues former Section 11343(a)(2) without substantive change.

27 **Heading of Article 2 (commencing with Section 11342) (repealed)**

28 SEC. _____. The heading of Article 2 (commencing with Section 11342) of
29 Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code is repealed.

30 **Article 2. Rules and Regulations**

31 **Gov’t Code § 11342 (repealed). Definitions**

32 SEC. _____. Section 11342 of the Government Code is repealed.

33 ~~11342. In this chapter, unless otherwise specifically indicated, the following~~
34 ~~definitions apply:~~

35 ~~(a) “Agency” and “state agency” do not include an agency in the judicial or~~
36 ~~legislative departments of the state government.~~

37 ~~(b) “Office” means the Office of Administrative Law.~~

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

40 ~~(d) “Performance standard” means a regulation that describes an objective with~~
41 ~~the criteria stated for achieving the objective.~~

42 ~~(e) “Plain English” means language that can be interpreted by a person who~~
43 ~~has no more than an eighth grade level of proficiency in English.~~

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

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

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

19 (A) Independently owned and operated.

20 (B) Not dominant in its field of operation.

21 (2) “Small business” does not include the following professional and business
22 activities:

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

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

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

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

30 (E) An entity organized as a nonprofit institution.

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

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

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

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

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

39 (ii) General construction, nine million five hundred thousand dollars
40 (\$9,500,000).

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

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

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

1 ~~(vi) Services, two million dollars (\$2,000,000).~~
2 ~~(vii) Transportation and warehousing, one million five hundred thousand dollars~~
3 ~~(\$1,500,000).~~

4 ~~(J) A manufacturing enterprise exceeding 250 employees.~~

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

7 **Comment.** Section 11342 is repealed.

8 Subdivision (a) is continued without substantive change in Section 11340.9(a)
9 (requirements of chapter do not apply to agency in the judicial or legislative branch of state
10 government). See also Sections 11000 (“state agency” defined), 11342.520 (“agency”
11 defined).

12 Subdivision (b) is continued without change in Section 11342.540.

13 Subdivision (c) is continued without change in Section 11342.550.

14 Subdivision (d) is continued without change in Section 11342.560.

15 Subdivision (e) is continued in Section 11342.570. The definition of “plain English” has
16 been changed so that it refers to the “clarity” standard provided in Section 11349(c)
17 (regulations must be written or displayed so that their meaning will be easily understood by
18 persons directly affected by them).

19 Subdivision (f) is continued without change in Section 11342.580.

20 The substance of subdivision (g) is continued in Sections 11340.9(b) (legal ruling of
21 counsel of the Franchise Tax Board or State Board of Equalization exempt from
22 requirements of chapter), 11340.9(c) (state form and instructions for use of form exempt
23 from requirements of chapter), 11340.9(d) (internal management rules exempt from
24 requirements of chapter), 11342.590 (“regulation” defined).

25 Subdivision (h) is continued without substantive change in Section 11342.600.

26 **Gov’t Code § 11342.1 (unchanged). Scope of authority**

27 11342.1. Except as provided in Section 11342.4, nothing in this chapter confers
28 authority upon or augments the authority of any state agency to adopt,
29 administer, or enforce any regulation. Each regulation adopted, to be effective,
30 shall be within the scope of authority conferred and in accordance with standards
31 prescribed by other provisions of law.

32 **Gov’t Code § 11342.2 (unchanged). Validity of regulations**

33 11342.2. Whenever by the express or implied terms of any statute a state
34 agency has authority to adopt regulations to implement, interpret, make specific
35 or otherwise carry out the provisions of the statute, no regulation adopted is valid
36 or effective unless consistent and not in conflict with the statute and reasonably
37 necessary to effectuate the purpose of the statute.

38 **Gov’t Code § 11342.4 (unchanged). Regulations to carry out provisions of chapter**

39 11342.4. The office shall adopt, amend, or repeal regulations for the purpose of
40 carrying out the provisions of this chapter.

1 **Gov't Code §§ 11342.510-11342.600 (added). Definitions**

2 SEC. ____ Article 2 (commencing with Section 11342.510) is added to Chapter
3 3.5 of Part 1 of Division 3 of Title 2 of the Government Code, to read:

4 Article 2. Definitions

5 **Gov't Code § 11342.510 (added). Application of definitions**

6 11342.510. Unless the provision or context otherwise requires, the definitions in
7 this article govern the construction of this chapter.

8 **Comment.** Section 11342.510 continues the introductory paragraph of former Section
9 11342 without substantive change.

10 **Gov't Code § 11342.520 (added). Agency**

11 11342.520. "Agency" means state agency.

12 **Comment.** Section 11342.520 is new. It clarifies part of the substance of former Section
13 11342(a). See also Section 11000 ("state agency" defined for purposes of this title).

14 **Gov't Code § 11342.530 (added). Building standard**

15 11342.530. "Building standard" has the meaning given in Section 18909 of
16 the Health and Safety Code.

17 **Comment.** Section 11342.530 is new. It is added for drafting convenience.

18 **Gov't Code § 11342.540 (added). Office**

19 11342.540. "Office" means the Office of Administrative Law.

20 **Comment.** Section 11342.540 continues former Section 11342(b) without change.

21 **Gov't Code § 11342.550 (added). Order of repeal**

22 11342.550. "Order of repeal" means any resolution, order or other official act
23 of a state agency that expressly repeals a regulation in whole or in part.

24 **Comment.** Section 11342.550 continues former Section 11342(c) without change.

25 **Gov't Code § 11342.560 (added). Performance standard**

26 11342.560. "Performance standard" means a regulation that describes an
27 objective with the criteria stated for achieving the objective.

28 **Comment.** Section 11342.560 continues former Section 11342(d) without change.

29 **Gov't Code § 11342.570 (added). Plain English**

30 11342.570. "Plain English" means language that satisfies the standard of
31 clarity provided in Section 11349.

32 **Comment.** Section 11342.570 is drawn from former Section 11342(e). The section differs
33 from former Section 11342(e) in that it refers to the "clarity" standard provided in Section
34 11349(c) (regulations must be written or displayed so that their meaning will be easily
35 understood by persons directly affected by them). Plain English requirements may be found
36 in Sections 11346.2 and 11346.5.

1 **Gov't Code § 11342.580 (added). Prescriptive standard**

2 11342.580. "Prescriptive standard" means a regulation that specifies the sole
3 means of compliance with a performance standard by specific actions,
4 measurements, or other quantifiable means.

5 **Comment.** Section 11342.580 continues former Section 11342(f) without change.

6 **Gov't Code § 11342.590 (added). Regulation**

7 11342.590. "Regulation" means every rule, regulation, order, or standard of
8 general application or the amendment, supplement, or revision of any rule,
9 regulation, order, or standard adopted by any state agency to implement, interpret,
10 or make specific the law enforced or administered by it, or to govern its
11 procedure.

12 **Comment.** Section 11342.590 continues part of former Section 11342(g) without
13 substantive change. Section 11340.9(b)-(d) continues the substance of the provisions of
14 former Section 11342(g) that are not continued in this section.

15 **Gov't Code § 11342.600 (added). Small business**

16 11342.600. (a) "Small business" means a business activity in agriculture,
17 general construction, special trade construction, retail trade, wholesale trade,
18 services, transportation and warehousing, manufacturing, generation and
19 transmission of electric power, or a health care facility, unless excluded in
20 subdivision (b), that is both of the following:

21 (1) Independently owned and operated.

22 (2) Not dominant in its field of operation.

23 (b) "Small business" does not include the following professional and business
24 activities:

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

29 (2) An insurance company, either stock or mutual.

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

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

32 (5) An entity organized as a nonprofit institution.

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

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

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

38 (9) A manufacturing enterprise exceeding 250 employees.

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

41 (c) "Small business" does not include the following business activities:

1 (1) Agriculture, where the annual gross receipts exceed one million dollars
2 (\$1,000,000).

3 (2) General construction, where the annual gross receipts exceed nine million
4 five hundred thousand dollars (\$9,500,000).

5 (3) Special trade construction, where the annual gross receipts exceed five
6 million dollars (\$5,000,000).


7 (4) Retail trade, where the annual gross receipts exceed two million dollars
8 (\$2,000,000).

9 (5) Wholesale trade, where the annual gross receipts exceed nine million five
10 hundred thousand dollars (\$9,500,000).

11 (6) Services, where the annual gross receipts exceed two million dollars
12 (\$2,000,000).

13 (7) Transportation and warehousing, where the annual gross receipts exceed
14 one million five hundred thousand dollars (\$1,500,000).

15 **Comment.** Section 11342.600 continues former Section 11342(h) without substantive
16 change.

17  **Note. The dollar amounts in this section have not been adjusted for inflation. The**
18 **Commission would like to receive input on whether these amounts should be increased and**
19 **if so, by how much.**

20 Article 3. Filing and Publication

21 **Gov't Code § 11343 (amended). Transmittal of certified copies of regulations**

22 SEC. _____. Section 11343 of the Government Code is amended to read:

23 11343. Every state agency shall:

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

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

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

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

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

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

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

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

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

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

12 **Comment.** Section 11343 is amended to make technical improvements.

13 Former subdivision (a)(1)-(2) is continued without substantive change in Section
14 11340.9(h)-(i). The substance of former subdivision (a)(3) is continued, with some changes,
15 in Section 11340.9(e). Section 11340.9 contains exemptions to the requirements of this
16 chapter. See also Section 11342.530 (“building standard” defined).

17 Subdivision (e) is amended to reflect the change in the name of the California Building
18 Standards Commission.

19 **Gov’t Code § 11343.1 (unchanged). Style**

20 11343.1. (a) All regulations transmitted to the Office of Administrative Law for
21 filing with the Secretary of State shall conform to the style prescribed by the
22 office.

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

25 **Gov’t Code § 11343.2 (unchanged). Filing procedures**

26 11343.2. The Secretary of State shall endorse on the certified copy of each
27 regulation or order of repeal filed with or delivered to him or her, the time and
28 date of filing and shall maintain a permanent file of the certified copies of
29 regulations and orders of repeal for public inspection.

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

33 **Gov’t Code § 11343.4 (amended). Effective date of regulation**

34 SEC. _____. Section 11343.4 of the Government Code is amended to read:

35 11343.4. A regulation or an order of repeal required to be filed with the
36 Secretary of State shall become effective on the 30th day after the date of filing
37 unless:

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

1 ~~(b) It is a regulation adopted under Section 8054 or 3373 of the Financial Code,~~
2 ~~in which event it shall become effective upon filing or upon any later date~~
3 ~~specified by the state agency in a written instrument filed with, or as part of, the~~
4 ~~regulation or order of repeal.~~

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

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

10 **Comment.** Section 11343.4(a) is amended to correct a drafting defect. Former subdivision
11 (b) is deleted as redundant. See Fin. Code §§ 3373(b)(3) (effective date of regulation
12 adopted pursuant to that section), 8054(c) (regulation adopted pursuant to that section subject
13 to Gov't Code § 11346.1); Gov't Code § 11346.1(d) (effective date of regulation adopted
14 pursuant to that section).

15 **Gov't Code § 11343.5 (unchanged). Filing of regulatory code or supplement**

16 11343.5. Within 10 days from the receipt of printed copies of the California
17 Code of Regulations or of the California Regulatory Code Supplement from the
18 State Printing Office, the office shall file one copy of the particular issue of the
19 code or supplement in the office of the county clerk of each county in this state,
20 or if the authority to accept filings on his or her behalf has been delegated by the
21 county clerk of any county pursuant to Section 26803.5, in the office of the
22 person to whom that authority has been delegated.

23 **Gov't Code § 11343.6 (unchanged). Effect of filing certified copy**

24 11343.6. The filing of a certified copy of a regulation or an order of repeal with
25 the Secretary of State raises the rebuttable presumptions that:

26 (a) It was duly adopted.

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

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

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

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

35 **Gov't Code § 11343.8 (unchanged). Filing and publication other than required by article**

36 11343.8. Upon the request of a state agency, the office may file with the
37 Secretary of State and the office may publish in such manner as it believes
38 proper, any regulation or order of repeal of a regulation not required by this
39 article to be filed with the Secretary of State.

1 **Heading of Article 4 (commencing with Section 11344) (amended)**

2 SEC. _____. The heading of Article 4 (commencing with Section 11344) of
3 Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code is amended
4 to read:

5 Article 4. The California Administrative Register and Code of Regulations, the
6 California Code of Regulations Supplement, and the
7 California Regulatory Notice Register

8 **Gov't Code § 11344 (amended). Code of Regulations**

9 SEC. _____. Section 11344 of the Government Code is amended to read:

10 11344. The office shall do all of the following:

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

17 (b) Provide for the compilation, printing, and publication of weekly updates of
18 the California Code of Regulations. This publication shall be known as the
19 California ~~Regulatory~~ Code of Regulations Supplement and shall contain
20 amendments to the code.

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

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

28 **Comment.** Section 11344 is amended to change the name of the California Regulatory
29 Code Supplement to conform to the name of the California Code of Regulations, which it
30 supplements.

31 **Gov't Code § 11344.1 (amended). California Regulatory Notice Register**

32 SEC. _____. Section 11344.1 of the Government Code is amended to read:

33 11344.1. The office shall do all of the following:

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

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

39 (2) A summary of all regulations filed with the Secretary of State in the previous
40 week.

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

5 ~~(4) The Governor's action in reviewing the disapprovals of the office, the~~
6 ~~decisions to repeal, the agency's request for review, the office's response thereto,~~
7 ~~and the decisions of the Governor's office, as required by Section 11349.7.~~
8 Material that is required to be published under Sections 11349.5, 11349.7, and
9 11349.9.

10 (5) Determinations issued pursuant to Section 11340.5.

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

15 **Comment.** Section 11344.1 is amended to eliminate ambiguity in subdivision (a)(4). This
16 change is technical and is not intended to affect the meaning of the section.

17 **Gov't Code § 11344.2 (amended). Supplying sets to county clerks or delegated persons**

18 SEC. _____. Section 11344.2 of the Government Code is amended to read:

19 11344.2. The office shall supply a complete set of the California Code of
20 Regulations, and of the California Regulatory Code Supplement ~~in the form~~
21 ~~provided by the State Printer~~ to the county clerk of any county or to the
22 delegatee of the county clerk pursuant to Section 26803.5, provided the director
23 makes the following two determinations:

24 (a) The county clerk or the delegatee of the county clerk pursuant to Section
25 26803.5 is maintaining the code and supplement in complete and current
26 condition in a place and at times convenient to the public.

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

33 **Comment.** Section 11344.2 is amended to reflect existing practice.

34  **Note. This change was requested by OAL. The Commission would like to receive**
35 **input as to whether this change would create any problems.**

36 **Gov't Code § 11344.3 (unchanged). Publication in Notice Register**

37 11344.3. Every document, other than a notice of proposed rulemaking action,
38 required to be published in the California Regulatory Notice Register by this
39 chapter, shall be published in the first edition of the California Regulatory Notice
40 Register following the date of the document.

1 **Gov't Code § 11344.4 (unchanged). Sale of publications**

2 11344.4. (a) The California Code of Regulations, the California Regulatory
3 Code Supplement, and the California Regulatory Notice Register shall be sold at
4 prices which will reimburse the state for all costs incurred for printing, publication,
5 and distribution.

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

11 **Gov't Code § 11344.6 (unchanged). Presumption from publication in Code or Supplement**

12 11344.6. The publication of a regulation in the California Code of Regulations
13 or California Regulatory Code Supplement raises a rebuttable presumption that
14 the text of the regulation as so published is the text of the regulation adopted.

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

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

20 **Gov't Code § 11344.7 (unchanged). Purchase of publications**

21 11344.7. Nothing in this chapter precludes any person or state agency from
22 purchasing copies of the California Code of Regulations, the California
23 Regulatory Code Supplement, or the California Regulatory Notice Register or of
24 any unit of either, nor from printing special editions of any such units and
25 distributing the same. However, where the purchase and printing is by a state
26 agency, the state agency shall do so at the cost or at less than the cost to the
27 agency if it is authorized to do so by other provisions of law.

28 **Gov't Code § 11344.9 (unchanged). Obsolete references**

29 11344.9. (a) Whenever the term "California Administrative Code" appears in
30 law, official legal paper, or legal publication, it means the "California Code of
31 Regulations."

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

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

1 Article 5. Public Participation: Procedure for Adoption of Regulations

2 **Gov't Code § 11346 (amended). Purpose and application**

3 SEC. _____. Section 11346 of the Government Code is amended to read:

4 11346. (a) It is the purpose of this chapter to establish basic minimum
5 procedural requirements for the adoption, amendment, or repeal of administrative
6 regulations. Except as provided in Section 11346.1, the provisions of this chapter
7 are applicable to the exercise of any quasi-legislative power conferred by any
8 statute heretofore or hereafter enacted, but nothing in this chapter repeals or
9 diminishes additional requirements imposed by any statute. This chapter shall not
10 be superseded or modified by any subsequent legislation except to the extent
11 that the legislation shall do so expressly.

12 (b) An agency that is considering adopting, amending, or repealing a regulation
13 may consult with interested persons before initiating regulatory action pursuant
14 to this article.

15 **Comment.** Section 11346(b) expressly authorizes the existing practice of informal
16 consultation with interested persons in developing a proposed regulation. For example, an
17 agency that is considering adoption of a regulation may hold a workshop in which interested
18 persons can share their views on the proposal. Informal communication of this type provides
19 useful information to the agency and may reduce opposition to the proposed regulation from
20 the interests that participated.

21 **Gov't Code § 11346.1 (amended). Emergency regulations**

22 SEC. _____. Section 11346.1 of the Government Code is amended to read:

23 ~~11346.1. (a) This article does not apply to any regulation not required to be filed~~
24 ~~with the Secretary of State under this chapter, and only this section and Sections~~
25 ~~11343.4 and 11349.6 apply to an emergency regulation adopted pursuant to~~
26 ~~subdivision (b), or to any regulation adopted under Section 8054 or 3373 of the~~
27 ~~Financial Code. The adoption, amendment, or repeal of an emergency regulation~~
28 ~~is not subject to any provision of this chapter except this section and Section~~
29 ~~11349.6.~~

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

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

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

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

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

10 (e) No regulation, amendment, or order of repeal adopted as an emergency
11 regulatory action shall remain in effect more than ~~120~~ 180 days unless the
12 adopting agency has complied with Sections 11346.2 to 11346.9, inclusive, prior
13 to the adoption of the emergency regulatory action, or has, within the 120-day
14 period, completed the regulation adoption process by formally adopting the
15 emergency regulation, amendment, or order of repeal or any amendments thereto,
16 pursuant to this chapter 11347.3, inclusive, either before adopting the emergency
17 regulation or within the 180-day period. The adopting agency, prior to the
18 expiration of the ~~120-day~~ 180-day period, shall transmit to the office for filing
19 with the Secretary of State the adopted regulation, amendment, or order of repeal,
20 the rulemaking file, and a certification that either Sections 11346.2 to 11346.9,
21 inclusive, were complied with prior to the emergency regulatory action, or that
22 there was compliance with this section within the 120-day period 11347.3,
23 inclusive, were complied with either before the emergency regulation was
24 adopted or within the 180-day period.

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

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

34 (h) ~~A regulation originally adopted as an emergency regulation, or an~~
35 ~~emergency regulation substantially equivalent thereto that is readopted as an~~
36 ~~emergency regulation, shall not be filed with the Secretary of State as an~~
37 ~~emergency regulation except with the express prior approval of the director of~~
38 ~~the office. Except with the express prior approval of the director of the office, an~~
39 ~~agency shall not adopt an emergency regulation that is substantially equivalent~~
40 ~~to an emergency regulation previously adopted by that agency. If the agency~~
41 ~~proposes the adoption of an emergency regulation that is substantially equivalent~~
42 ~~to a previously adopted emergency regulation and the director does not~~

1 expressly approve adoption of the emergency regulation, the office shall not file
2 the emergency regulation with the Secretary of State.

3 **Comment.** Section 11346.1(a) is amended to make four technical changes:

4 (1) The provision establishing an exception to the requirements of this article for “any
5 regulation not required to be filed with the Secretary of State under this chapter” is deleted.
6 The substance of this exception is continued in Section 11340.9(h)-(i). This change also
7 resolves an inconsistency between Section 11356(b), which expressly requires building
8 standards to be adopted under this article, and the deleted language, which exempted building
9 standards from the requirements of this article.

10 (2) An inconsistency between this section and Financial Code Section 3373 is eliminated.

11 (3) A redundant reference to Financial Code Section 8054 is eliminated.

12 (4) An inconsistency between subdivision (d) and Section 11343.4 is eliminated.

13 Subdivision (c) is amended to use the defined term “building standard” and to correct a
14 grammatical error. See Section 11342.530 (“building standard” defined).

15 Subdivision (e) is amended to extend the effective period of an emergency regulation from
16 120 days to 180 days and to correct an underinclusive reference.

17 Subdivision (h) is amended to improve its clarity.

18 **Gov’t Code § 11346.2 (amended). Notification of Office of Administrative Law**

19 SEC. _____. Section 11346.2 of the Government Code is amended to read:

20 11346.2. Every agency subject to this chapter shall prepare, submit to the office
21 with the notice of the proposed action as described in Section 11346.5, and make
22 available to the public upon request, all of the following:

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

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

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

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

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

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

43 (2) A statement of the specific purpose of each adoption, amendment, or repeal
44 and the rationale for the determination by the agency that each adoption,

1 amendment, or repeal is reasonably necessary to carry out the purpose for which
2 it is proposed. Where the adoption or amendment of a regulation would mandate
3 the use of specific technologies or equipment, a statement of the reasons why the
4 agency believes these mandates or prescriptive standards are required.

5 ~~(3)~~ (2) An identification of each technical, theoretical, and empirical study,
6 report, or similar document, if any, upon which the agency relies in proposing the
7 adoption, amendment, or repeal of a regulation.

8 (4) ~~(3)~~ (A) A description of the alternatives to the regulation considered by the
9 agency and the agency's reasons for rejecting those alternatives. In the case of a
10 regulation that would mandate the use of specific technologies or equipment or
11 prescribe specific actions or procedures, the imposition of performance standards
12 shall be considered as an alternative.

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

17 ~~(5)~~ (4) Facts, evidence, documents, testimony, or other evidence ~~upon which~~
18 that the agency relies to believes may support a finding that the action will not
19 have a significant adverse economic impact on business.

20 (6) (5) A department, board, or commission within the Environmental Protection
21 Agency, the Resources Agency, or the Office of the State Fire Marshal shall
22 describe its efforts, in connection with a proposed rulemaking action, to avoid
23 unnecessary duplication or conflicts with federal regulations contained in the
24 Code of Federal Regulations addressing the same issues. These agencies may
25 adopt regulations different from federal regulations contained in the Code of
26 Federal Regulations addressing the same issues upon a finding of one or more of
27 the following justifications:

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

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

31 (c) A state agency that adopts or amends a regulation mandated by federal law
32 or regulations, the provisions of which are identical to a previously adopted or
33 amended federal regulation, shall be deemed to have complied with subdivision
34 (b) if a statement to the effect that a federally mandated regulation or amendment
35 to a regulation is being proposed, together with a citation to where an
36 explanation of the provisions of the regulation can be found, is included in the
37 notice of proposed adoption or amendment prepared pursuant to Section
38 11346.5. However, the agency shall comply fully with this chapter with respect to
39 any provisions in the regulation that the agency proposes to adopt or amend that
40 are different from the corresponding provisions of the federal regulation.

41 **Comment.** Subdivision (a)(1) of Section 11346.2 is a specific application of Section
42 6215(a) (state agency "shall write each document which it produces in plain, straightforward
43 language, avoiding technical terms as much as possible, and using a coherent and easily

1 readable style”). The requirement that a regulation be written in plain English has been
2 expanded to include all regulations and not just those that affect small business. Plain English
3 means language that satisfies the clarity standard expressed in Section 11349. See Section
4 11342.570 (“plain English” defined). Note that the former provision requiring the
5 preparation of a plain English summary of a proposed regulation affecting small businesses,
6 where the regulation cannot be drafted in plain English, has been broadened to apply to all
7 regulations and continued in Section 11346.5(a)(3)(B). See Sections 11342.570 (“plain
8 English” defined), 11349(c) (clarity standard).

9 Former subdivision (b)(1) (description of problem addressed) is deleted as unnecessary; the
10 same information is required by former subdivision (b)(2) (statement of purpose for
11 proposed action). Former subdivision (b)(5) is revised to eliminate the implication that formal
12 findings are required before the agency has received comment on a proposed action.

13 Former subdivision (b)(4)(B) has been amended to require that an agency describe
14 alternatives that would lessen adverse impacts on any business, not just on a small business.

15 **Gov’t Code § 11346.3 (amended). Potential economic effect**

16 SEC. ____ . Section 11346.3 of the Government Code is amended to read:

17 11346.3. (a) State agencies proposing to adopt, ~~or amend,~~ or repeal any
18 administrative regulation shall assess the potential for adverse economic impact
19 on California business enterprises and individuals, avoiding the imposition of
20 unnecessary or unreasonable regulations or reporting, recordkeeping, or
21 compliance requirements. For purposes of this subdivision assessing the potential
22 for adverse economic impact shall require agencies, when ~~adopting new~~
23 ~~regulations or reviewing, or amending, existing regulations~~ proposing to adopt,
24 amend, or repeal a regulation, to adhere to the following requirements, to the
25 extent that these requirements do not conflict with other state or federal laws:

26 (1) ~~The regulations proposed adoption, amendment, or repeal of a regulation~~
27 ~~shall be based on adequate information concerning the need for, and~~
28 ~~consequences of, proposed governmental action.~~

29 (2) The state agency, prior to submitting ~~regulations~~ a proposal to adopt, amend,
30 or repeal a regulation to the office, shall consider the proposal’s impact on
31 business, ~~when initiating, processing, and adopting regulations~~ with consideration
32 of industries affected including the ability of California businesses to compete
33 with businesses in other states. For purposes of evaluating the impact on the
34 ability of California businesses to compete with businesses in other states, an
35 agency shall consider, but not be limited to, information supplied by interested
36 parties.

37 It is not the intent of this section to impose additional criteria on agencies,
38 above that which exists in current law, in assessing adverse economic impact on
39 California business enterprises, but only to assure that the assessment is made
40 early in the process of initiation and development of ~~proposed regulations or~~
41 ~~amendments to regulations~~ a proposed adoption, amendment, or repeal of a
42 regulation.

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

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

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

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

9 (2) ~~For purposes of this subdivision, “state agency” shall include every state~~
10 ~~office, officer, department, division, bureau, board, and commission, whether~~
11 ~~created by the Constitution, statute, or initiative, but shall not include the courts,~~
12 ~~an agency in the judicial or legislative branch of state government, This~~
13 ~~subdivision does not apply to the University of California, the Hastings College~~
14 ~~of the Law, or the Fair Political Practices Commission.~~

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

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

21 **Comment.** Section 11346.3(a) is amended to provide that it applies to the repeal of a
22 regulation as well as the adoption or amendment of a regulation.

23 Subdivision (b)(2) is amended to recast the definition provision as a substantive limitation.
24 This change is technical and does not affect the meaning of the section. See Sections 11000
25 (“state agency” defined), 11340.9(a) (requirements of chapter do not apply to agency in
26 judicial or legislative branch).

27 **Gov’t Code § 11346.4 (amended). Notice of proposed action**

28 SEC. _____. Section 11346.4 of the Government Code is amended to read:

29 11346.4. (a) At least 45 days prior to the hearing and close of the public
30 comment period on the adoption, amendment, or repeal of a regulation, notice of
31 the proposed action shall be:

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

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

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

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

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

1 (b) ~~The effective period of a notice issued pursuant to this section shall not~~
2 ~~exceed one year from the date thereof. If the adoption, amendment, or repeal of a~~
3 ~~regulation proposed in the notice is not completed and transmitted to the office~~
4 ~~within the period of one year, a notice of the proposed action shall again be~~
5 ~~issued pursuant to this article. Except where its effective period is extended~~
6 ~~pursuant to this subdivision, a notice of proposed action shall not be effective for~~
7 ~~more than one year after the date it was published. For good cause, the director of~~
8 ~~the office may extend the effective period of a notice of proposed action by an~~
9 ~~additional 90 days. If the action proposed in a notice is not completed and~~
10 ~~transmitted to the office within the effective period of the notice, a new notice~~
11 ~~shall be issued pursuant to this article.~~

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

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

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

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

25 **Comment.** Section 11346.4(b) is amended to provide that the director of the Office of
26 Administrative Law may extend the effective period of a notice for good cause (e.g., where
27 the comments received by an agency are so voluminous that the agency cannot adopt the
28 proposed regulation within one year).

29 **Gov't Code § 11346.5 (amended). Notice contents**

30 SEC. _____. Section 11346.5 of the Government Code is amended to read:

31 11346.5. (a) The notice of proposed adoption, amendment, or repeal of a
32 regulation shall include the following:

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

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

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

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

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

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

11 (5) A determination as to whether the regulation imposes a mandate on local
12 agencies or school districts and, if so, whether the mandate requires state
13 reimbursement pursuant to Part 7 (commencing with Section 17500) of Division
14 4.

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

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

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

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

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

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

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

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

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

1 (iv) Exemption or partial exemption from the regulatory requirements for
2 businesses.”

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

10 An agency’s ~~determination~~ belief and declaration that a proposed adoption,
11 amendment, or repeal of a regulation may have or will not have a significant,
12 adverse impact on businesses, including the ability of California businesses to
13 compete with businesses in other states, shall not be grounds for the office to
14 refuse to publish the notice of proposed action.

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

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

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

24 (11) The finding prescribed by subdivision (c) of Section 11346.3, if required.

25 (12) A statement that the action would have a significant effect on housing
26 costs, if a state agency, in adopting, amending, or repealing any administrative
27 regulation, ~~determines that the action would have an effect~~ believes that the
28 action would have that effect. In addition, the agency officer designated in
29 paragraph (13), shall make available to the public, upon request, the agency’s
30 evaluation, if any, of the effect of the proposed regulatory action on housing
31 costs.

32 (12) (13) A statement that the adopting agency must determine that no
33 alternative considered by the agency would be more effective in carrying out the
34 purpose for which the action is proposed or would be as effective and less
35 burdensome to affected private persons than the proposed action.

36 (13) (14) The name and telephone number of the agency officer to whom
37 inquiries concerning the proposed administrative action may be directed.

38 (14) (15) The date by which comments submitted in writing must be received to
39 present statements, arguments, or contentions in writing relating to the proposed
40 action in order for them to be considered by the state agency before it adopts,
41 amends, or repeals a regulation.

42 (15) (16) Reference to the fact that the agency proposing the action has
43 prepared a statement of the reasons for the proposed action, has available all the

1 information upon which its proposal is based, and has available the express terms
2 of the proposed action, pursuant to subdivision (b).

3 ~~(16)~~ (17) A statement that if a public hearing is not scheduled, any interested
4 person or his or her duly authorized representative may request, no later than 15
5 days prior to the close of the written comment period, a public hearing pursuant
6 to Section 11346.8.

7 ~~(17)~~ (18) A statement indicating that the full text of a regulation changed
8 pursuant to Section 11346.8 will be available for at least 15 days prior to the date
9 on which the agency adopts, amends, or repeals the resulting regulation.

10 (b) The agency officer designated in paragraph ~~(13)~~ (14) of subdivision (a) shall
11 make available to the public upon request the express terms of the proposed
12 action. The officer shall also make available to the public upon request the
13 location of public records, including reports, documentation, and other materials,
14 related to the proposed action.

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

20 **Comment.** Section 11346.5(a)(3)(B) is amended to broaden the plain English policy
21 statement requirement to apply to all proposed actions, and not just those affecting small
22 business. The informative digest is also expanded to include a plain English summary of the
23 regulation. See Sections 11342.570 (“plain English” defined), 11349(c) (clarity standard).

24 Paragraphs (7)-(8) and former subdivision (a)(11) of subdivision (a) are amended to make
25 clear that formal findings are not required before the agency has received comment on a
26 proposed action. Paragraphs (7)-(8) are also amended to provide that those provisions apply
27 to the repeal of a regulation, as well as the adoption, or amendment of a regulation.

28 The new subdivision (a)(11) is added to include a finding that it is necessary for the health,
29 safety, or welfare of the people of the state that a regulation requiring a report apply to
30 businesses. This implements Section 11346.3(c).

31 **Gov’t Code § 11346.54 (repealed). Assessment of economic effect**

32 SEC. _____. Section 11346.54 of the Government Code is repealed.

33 ~~11346.54. (a) All state agencies proposing to adopt, or amend any~~
34 ~~administrative regulation shall assess whether and to what extent it will affect the~~
35 ~~following:~~

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

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

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

41 ~~(b) For purposes of this section, “state agency” shall include every state office,~~
42 ~~officer, department, division, bureau, board, and commission, whether created by~~
43 ~~the Constitution, statute, or initiative, but shall not include the courts, an agency~~
44 ~~in the judicial or legislative branch of state government, This section does not~~

1 apply to the University of California, the Hastings College of the Law, or the Fair
2 Political Practices Commission.

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

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

7 **Comment.** Section 11346.54 is repealed as redundant. See Sections 11346.3(b)
8 (assessment of economic effect), 11346.5(a)(10) (inclusion of assessment in notice of
9 proposed action).

10 **Gov't Code § 11346.8 (amended). Public hearing**

11 SEC. _____. Section 11346.8 of the Government Code is amended to read:

12 11346.8. (a) If a public hearing is held, both oral and written statements,
13 arguments, or contentions, ~~either oral or in writing, or both~~, shall be permitted. The
14 agency may impose reasonable limitations on oral presentations. If a public
15 hearing is not scheduled, the state agency shall, consistent with Section 11346.4,
16 afford any interested person or his or her duly authorized representative, the
17 opportunity to present statements, arguments or contentions in writing. In
18 addition, a public hearing shall be held if, no later than 15 days prior to the close
19 of the written comment period, an interested person or his or her duly authorized
20 representative submits in writing to the state agency, a request to hold a public
21 hearing. The state agency shall, to the extent practicable, provide notice of the
22 time, date, and place of the hearing by mailing the notice to every person who has
23 filed a request for notice thereby with the state agency. The state agency shall
24 consider all relevant matter presented to it before adopting, amending, or
25 repealing any regulation.

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

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

1 (d) No state agency shall add any material to the record of the rulemaking
2 proceeding after the close of the public hearing or comment period, unless
3 adequate provision is made for public comment on that matter. This subdivision
4 does not apply to material prepared pursuant to Section 11346.9.

5 **Comment.** Subdivision (a) of Section 11346.8 is amended to make clear that oral
6 testimony must be allowed at a public hearing, subject to reasonable time, repetition, or other
7 limitations by the agency.

8 Subdivision (d) is amended to recognize that the final statement of reasons and updated
9 informative digest are added to the record of the rulemaking proceeding after the close of the
10 hearing or comment period. See Sections 11346.9 (final statement of reasons and updated
11 informative digest), 11347.3 (rulemaking file). If the final statement of reasons refers to
12 documents not previously included in the record of the rulemaking proceeding, the addition
13 of those documents to the rulemaking file is governed by Section 11347.1 (documents added
14 to rulemaking file).

15 **Gov't Code § 11346.9 (amended). Final statement of reasons and updated informative**
16 **digest**

17 SEC. ____ Section 11346.9 of the Government Code is amended to read:

18 11346.9. Every agency subject to this chapter shall do the following:

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

21 (1) An update of the information contained in the initial statement of reasons. If
22 the update identifies any data or any technical, theoretical or empirical study,
23 report, or similar document on which the agency is relying in proposing the
24 adoption, ~~or amendment,~~ or repeal of a regulation that was not identified in the
25 initial statement of reasons, or which was otherwise not identified or made
26 available for public review prior to the close of the public comment period, the
27 agency shall comply with ~~subdivision (d) of Section 11346.8~~ Section 11347.1.

28 (2) A determination as to whether adoption, amendment, or repeal of the
29 regulation imposes a mandate on local agencies or school districts. If the
30 determination is that adoption, amendment, or repeal of the regulation ~~does~~
31 ~~contain~~ would impose a local mandate, the agency shall state whether the
32 mandate is reimbursable pursuant to Part 7 (commencing with Section 17500) of
33 Division 4. If the agency finds that the mandate is not reimbursable, it shall state
34 the reasons for that finding.

35 (3) A summary of each objection or recommendation made regarding the
36 specific adoption, amendment, or repeal proposed, together with an explanation
37 of how the proposed action has been changed to accommodate each objection or
38 recommendation, or the reasons for making no change. This requirement applies
39 only to objections or recommendations specifically directed at the agency's
40 proposed action or to the procedures followed by the agency in proposing or
41 adopting the action. The agency may aggregate and summarize repetitive or
42 irrelevant comments as a group, and may respond to repetitive comments or
43 summarily dismiss irrelevant comments as a group.

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

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

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

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

23 **Comment.** Section 11346.9(a)(1) is amended to cross-refer to the newly-created procedure
24 governing addition of documents to the rulemaking file. See Section 11347.1. Subdivision
25 (a)(1)-(2) is also amended to make clear that those provisions apply to the repeal of a
26 regulation as well as the adoption or amendment of a regulation.

27 Subdivision (a)(3) is amended to codify the existing practice of grouping repetitive
28 comments and summarily dismissing irrelevant comments for purposes of this section.

29 Subdivision (a)(5) is amended to require an explanation for rejecting alternatives that
30 would lessen the adverse economic impact on any business, not just a small business.

31 **Gov't Code § 11347.1 (added). Documents added to rulemaking file**

32 SEC. _____. Section 11347.1 is added to the Government Code, to read:

33 11347.1. (a) An agency that adds any technical, theoretical, or empirical study,
34 report, or similar document to the rulemaking file after publication of the notice of
35 proposed action and relies on the document in proposing the action shall make
36 the document available as required by this section.

37 (b) At least 15 calendar days before a regulation is adopted and submitted to
38 the office for review and filing with the Secretary of State, the agency shall mail
39 to all of the following persons a notice identifying the added document and
40 stating the place and business hours that the document is available for public
41 inspection:

42 (1) Persons who testified at the public hearing.

43 (2) Persons who submitted written comments at the public hearing.

1 (3) Persons whose comments were received by the agency during the public
2 comment period.

3 (4) Persons who requested notification from the agency of the availability of
4 changes to the text of the proposed regulation.

5 (c) Documents shall be available for public inspection at the location described
6 in the notice for at least 15 calendar days before the proposed regulation is
7 adopted and submitted to the office for review and filing with the Secretary of
8 State.

9 (d) Written comments on the documents or information received by the agency
10 during the availability period shall be summarized and responded to in the final
11 statement of reasons as provided in Section 11346.9.

12 (e) The rulemaking record shall contain a statement confirming that the agency
13 complied with the requirements of this section and stating the date on which the
14 notice was mailed.

15 (f) If there are no persons in categories listed in subdivision (b), then the
16 rulemaking record shall contain a confirming statement to that effect.

17 **Comment.** Section 11347.1 implements Section 11346.9(a)(1) by prescribing a more
18 detailed procedure than that provided in Section 11346.8(d). It is drawn from 1 Cal. Code
19 Regs. § 45.

20 **Gov't Code § 11347.3 (amended). File of rulemaking proceeding**

21 SEC. _____. Section 11347.3 of the Government Code is amended to read:

22 11347.3. (a) Every agency shall maintain a file of each rulemaking that shall be
23 deemed to be the record for that rulemaking proceeding. Commencing no later
24 than the date that the notice of the proposed action is published in the California
25 Regulatory Notice Register, and during all subsequent periods of time that the file
26 is in the agency's possession, the agency shall make the file available to the
27 public for inspection and copying during regular business hours.

28 (b) The rulemaking file shall include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (e) Upon filing a regulation with the Secretary of State pursuant to Section
31 11349.3, the office shall return the related rulemaking file to the agency, after
32 which no item contained in the file shall be removed, altered, or destroyed or
33 otherwise disposed of. The agency shall maintain the file unless it elects to
34 transmit the file to the State Archives pursuant to subdivision (f).

35 (f) The agency may transmit the rulemaking file to the State Archives. The file
36 shall include instructions that the Secretary of State shall not remove, alter, or
37 destroy or otherwise dispose of any item contained in the file. Pursuant to Section
38 12223.5, the Secretary of State may designate a time for the delivery of the
39 rulemaking file to the State Archives in consideration of document processing or
40 storage limitations.

41 **Comment.** Section 11347.3(a) is amended to make clear that the rulemaking file is
42 available to the public throughout the rulemaking process.

43 Subdivision (b)(9) is amended to improve its clarity, without affecting its substance.

Article 6. Review of Proposed Regulations

Gov't Code § 11349 (amended). Standards

SEC. _____. Section 11349 of the Government Code is amended to read:

11349. The following ~~definitions~~ provisions govern the ~~interpretation of this chapter~~ review of a proposed regulation under Section 11349.1:

(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. A regulation satisfies the necessity standard if the major provisions of the regulation and any specific provisions of the regulation that have been challenged are shown by substantial evidence in the rulemaking file to be necessary to effectuate the purpose of the statute, court decision, or other provision of law that the regulation implements, interprets, or makes specific, taking into account the totality of the record. For the purposes of this subdivision, the following terms have the following meanings:~~

(1) ~~“Evidence” includes rationales, facts, studies, and expert opinion. Where the need for a regulation is based on policy judgments and cannot, as a practical matter, be demonstrated by facts or expert opinion, a statement of the adopting agency’s rationale for the necessity of the regulation shall be considered substantial evidence. An agency that relies on a statement of its rationale for the necessity of the regulation under this subdivision must explain why the necessity of the regulation cannot, as a practical matter, be demonstrated by facts or expert opinion.~~

(2) ~~A provision is “challenged” if a public comment opposes the provision or asserts that it is unnecessary and states a specific reason for that opposition or assertion.~~

(b) ~~“Authority” means the provision of law which permits or obligates the agency to adopt, amend, or repeal a regulation. A regulation satisfies the authority standard if the regulation is authorized or required by statute.~~

(c) ~~“Clarity” means written or displayed so that the meaning of regulations will be easily understood by those persons directly affected by them. A regulation satisfies the clarity standard if it is drafted so that it can be easily understood by those who will be directly affected by it.~~

(d) ~~“Consistency” means being A regulation satisfies the consistency standard if it is 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. A regulation satisfies the reference standard if the adopting agency has provided the office with a complete and accurate list of the provisions of law that the regulation implements, interprets, or makes specific.~~

1 (f) ~~“Nonduplication” means that a regulation~~ A regulation satisfies the
2 nonduplication standard if the regulation does not serve the same purpose as a
3 state or federal statute or another regulation. This standard requires that an
4 agency proposing to amend or adopt a regulation must identify any state or
5 federal statute or regulation which is overlapped or duplicated by the proposed
6 regulation and justify any overlap or duplication. This standard is not intended to
7 prohibit state agencies from printing relevant portions of enabling legislation in
8 regulations when the duplication is necessary to satisfy the clarity standard in
9 ~~paragraph (3) of subdivision (a) of Section 11349.1~~ provided in subdivision (c).
10 This standard is intended to prevent the indiscriminate incorporation of statutory
11 language in a regulation.

12 **Comment.** Section 11349 is amended to clarify operation of the standards for
13 administrative review of proposed regulations.

14 Subdivision (a) is amended to make three changes:

15 (1) The meaning of “necessity” is placed in context. The subdivision now provides that
16 the necessity standard is met if a regulation is necessary to achieve the purpose of the
17 provision of law that it implements, interprets, or makes specific. This is consistent with other
18 provisions that relate to the necessity of a regulation. See Gov’t Code §§ 11342.2 (regulation
19 not valid unless “reasonably necessary to effectuate the purpose of statute” authorizing the
20 regulation), 11350 (court may find regulation invalid if agency determination that the
21 regulation “is reasonably necessary to effectuate the purpose of the statute, court decision, or
22 other provision of law that is being implemented, interpreted, or made specific by the
23 regulation” is not supported by substantial evidence).

24 (2) The scope of the standard’s application is clarified. The subdivision now provides that
25 an adopting agency need only establish the necessity of a regulation as a whole and the
26 necessity of provisions that are challenged in public comment. In order to challenge a
27 provision, a commentator must provide a specific reason for an objection. An objection that
28 does not state a reason, or that states a general or immaterial reason, is not a challenge for the
29 purposes of subdivision (a).

30 (3) The evidentiary standard for demonstrating necessity has been changed to recognize
31 that the necessity of some policy decisions is not, as a practical matter, factually demonstrable.
32 However, the reasonable necessity of such decisions must still be explained by the adopting
33 agency, and the agency must explain why it is impracticable to demonstrate necessity by
34 reference to facts or expert opinion.

35 Subdivisions (b)-(f) are amended to improve their clarity. The substance of these provisions
36 is continued without change.

37 In applying these standards, the Office of Administrative Law may not substitute its
38 judgment for that of the adopting agency with regard to the substance of the regulation. See
39 Sections 11340.1 (“It is the intent of the Legislature that neither the Office of Administrative
40 Law nor the court should substitute its judgment for that of the rulemaking agency as
41 expressed in the substantive content of adopted regulations.”), 11349.1(c) (“The regulations
42 adopted by the office shall ensure that it does not substitute its judgment for that of the
43 rulemaking agency as expressed in the substantive content of adopted regulations.”).

44 **Gov’t Code § 11349.1 (amended). Review of regulations**

45 SEC. _____. Section 11349.1 of the Government Code is amended to read:

46 11349.1. (a) The office shall review all regulations adopted, amended, or
47 repealed pursuant to the procedure specified in Article 5 (commencing with

1 Section 11346) and submitted to it for publication in the California Regulatory
2 Code Supplement and for transmittal to the Secretary of State and make
3 determinations using all of the following standards:

- 4 (1) Necessity.
- 5 (2) Authority.
- 6 (3) Clarity.
- 7 (4) Consistency.
- 8 (5) Reference.
- 9 (6) Nonduplication.

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

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

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

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

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

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

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

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

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

42 (C) Attach a letter or other documentation from the Department of Finance
43 which states that the Department of Finance has approved a request by the

1 agency that funds be included in the Budget Bill for the next following fiscal
2 year to reimburse local agencies or school districts for the costs mandated by the
3 regulation.

4 (D) Attach a letter or other documentation from the Department of Finance
5 which states that the Department of Finance has authorized the augmentation of
6 the amount available for expenditure under the agency's appropriation in the
7 Budget Act which is for reimbursement pursuant to Part 7 (commencing with
8 Section 17500) of Division 4 to local agencies or school districts from the
9 unencumbered balances of other appropriations in the Budget Act and that this
10 augmentation is sufficient to reimburse local agencies or school districts for their
11 costs mandated by the regulation.

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

14 (f) The office shall return a rulemaking file to the submitting agency if the file
15 does not comply with subdivisions (a) and (b) of Section 11347.3. Within three
16 state working days of the receipt of a rulemaking file, the office shall notify the
17 submitting agency of any deficiency identified. If no notice of deficiency is
18 mailed to the adopting agency within that time, a rulemaking file shall be deemed
19 submitted as of the date of its original receipt by the office. A rulemaking file shall
20 not be deemed submitted until each deficiency identified under this subdivision
21 has been corrected.

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

25 **Comment.** Section 11349.1 is amended to make clear that the section requires review of the
26 repeal of a regulation, as well as the adoption, or amendment of a regulation.

27 **Gov't Code § 11349.2 (added). Adding to rulemaking file during review**

28 SEC. ____. Section 11349.2 is added to the Government Code, to read:

29 11349.2. An agency may add material to a rulemaking file that it has submitted
30 to the office for review pursuant to this article where addition of the material does
31 not violate other requirements of this chapter.

32 **Comment.** Section 11349.2 allows an agency to add inadvertently omitted material to a
33 rulemaking file that has been submitted for review by the Office of Administrative Law. See
34 Sections 11346.8(d) (limitation on addition of material to rulemaking file after close of
35 public comment), 11346.9(a)(1) (limitation on use of new data in final statement of reasons).

36 **Gov't Code § 11349.3 (amended). Approval or disapproval**

37 SEC. ____. Section 11349.3 of the Government Code is amended to read:

38 11349.3. (a) The office shall either approve a regulation submitted to it for
39 review and transmit it to the Secretary of State for filing or disapprove it within
40 30 working days after the regulation has been submitted to the office for review.
41 If the office fails to act within 30 days, the regulation shall be deemed to have
42 been approved and the office shall transmit it to the Secretary of State for filing.

1 (b) If the office disapproves a regulation, it shall return it to the adopting
2 agency within the 30-day period specified in subdivision (a) accompanied by a
3 notice specifying the reasons for disapproval. Within seven calendar days of the
4 issuance of the notice, the office shall provide the adopting agency with a written
5 decision detailing the reasons for disapproval. No regulation shall be disapproved
6 except for failure to comply with the standards set forth in Section 11349.1 or for
7 failure to comply with this chapter.

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

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

19 (e) The 30 working day period provided in subdivisions (a) and (b) may be
20 extended to 45 working days if the director certifies in writing that additional
21 time is required due to the size or complexity of a proposed regulation. A
22 certification under this subdivision shall explain why additional time is required
23 and shall be delivered to the agency proposing the regulation within the 30
24 working day period provided in subdivisions (a) and (b).

25 **Comment.** Section 11349.3(c) is amended to reflect the fact that the effective period of a
26 notice of proposed regulation can exceed one year with the approval of the director of the
27 Office of Administrative Law. See Section 11346.4(b).

28 Subdivision (e) is added to authorize an extension of the time period for review of
29 unusually large or complex regulations.

30 **Gov't Code § 11349.4 (unchanged). Returned regulations**

31 11349.4. (a) A regulation returned to an agency because of failure to meet the
32 standards of Section 11349.1, because of an agency's failure to comply with this
33 chapter may be rewritten and resubmitted within 120 days of the agency's
34 receipt of the written opinion required by subdivision (b) of Section 11349.3
35 without complying with the notice and public hearing requirements of Sections
36 11346.4, 11346.5, and 11346.8 unless the substantive provisions of the regulation
37 have been significantly changed. If the regulation has been significantly changed
38 or was not submitted within 120 days of receipt of the written opinion, the
39 agency shall comply with Article 5 (commencing with Section 11346) and
40 readopt the regulation. The director of the office may, upon a showing of good
41 cause, grant an extension to the 120-day time period specified in this subdivision.

42 (b) Upon resubmission of a disapproved regulation to the office pursuant to
43 subdivision (a), the office shall only review the resubmitted regulation for those

1 reasons expressly identified in the written opinion required by subdivision (b) of
2 Section 11349.3, or for those issues arising as a result of a substantial change to a
3 provision of the resubmitted regulation or as a result of intervening statutory
4 changes or intervening court orders or decisions.

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

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

13 **Gov't Code § 11349.5 (unchanged). Review by Governor of decision by Office of**
14 **Administrative Law**

15 11349.5. (a) To initiate a review of a decision by the office, the agency shall file
16 a written Request for Review with the Governor's Legal Affairs Secretary within
17 10 days of receipt of the written opinion provided by the office pursuant to
18 subdivision (b) of Section 11349.3. The Request for Review shall include a
19 complete statement as to why the agency believes the decision is incorrect and
20 should be overruled. Along with the Request for Review, the agency shall submit
21 all of the following:

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

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

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

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

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

38 (e) The Governor may overrule the decision of the office disapproving a
39 proposed regulation, an order repealing an emergency regulation adopted
40 pursuant to subdivision (b) of Section 11346.1, or a decision refusing to allow the
41 readoption of an emergency regulation pursuant to Section 11346.1. In that

1 event, the office shall immediately transmit the regulation to the Secretary of State
2 for filing.

3 (f) Upon overruling the decision of the office, the Governor shall immediately
4 transmit to the Committees on Rules of both houses of the Legislature a statement
5 of his or her reasons for overruling the decision of the office, along with copies of
6 the adopting agency's initial statement of reasons issued pursuant to Section
7 11346.2 and the office's statement regarding the disapproval of a regulation
8 issued pursuant to subdivision (b) of Section 11349.3. The Governor's action and
9 the reasons therefor shall be published in the California Regulatory Notice
10 Register.

11 **Gov't Code § 11349.6 (amended). Emergency regulations**

12 SEC. _____. Section 11349.6 of the Government Code is amended to read:

13 11349.6. (a) In the event the adopting agency has complied with Sections
14 11346.2 to ~~11346.9~~ 11347.3, inclusive, prior to the adoption of the regulation as
15 an emergency, the office shall approve or disapprove the regulation in
16 accordance with this article.

17 (b) Emergency regulations adopted pursuant to subdivision (b) of Section
18 11346.1 shall be reviewed by the office within 10 calendar days after their
19 submittal to the office. The office shall not file the emergency regulations with the
20 Secretary of State if it determines that the regulation is not necessary for the
21 immediate preservation of the public peace, health and safety, or general welfare,
22 or if it determines that the regulation fails to meet the standards set forth in
23 Section 11349.1, or if it determines the agency failed to comply with subdivisions
24 (b) and (c) of Section 11346.1.

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

29 (d) Within 30 working days of the filing of a certificate of compliance, the office
30 shall review the regulation and hearing record and approve or order the repeal of
31 an emergency regulation if it determines that the regulation fails to meet the
32 standards set forth in Section 11349.1, or if it determines that the agency failed to
33 comply with this chapter. The period for review pursuant to this subdivision may
34 be extended to 45 working days if the director certifies in writing that additional
35 time is required due to the size or complexity of a proposed regulation. A
36 certification under this subdivision shall explain why additional time is required
37 and shall be delivered to the agency proposing the regulation within the regular
38 30 working day review period provided in this subdivision.

39 **Comment.** Section 11349.6(a) is amended to correct an underinclusive reference.

40 Subdivision (e) is amended to conform the period for review of an emergency regulation
41 under that subdivision to the period for review of nonemergency regulations under Section
42 11343.3. A provision has also been added to authorize an extension of the period where
43 necessary for review of unusually large or complex regulations.

1 Article 7. Review of Existing Regulations

2 **Gov't Code § 11349.7 (unchanged). Review of regulations on request of Legislature**

3 11349.7. The office, at the request of any standing, select, or joint committee of
4 the Legislature, shall initiate a priority review of any regulation, group of
5 regulations, or series of regulations that the committee believes does not meet the
6 standards set forth in Section 11349.1.

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

19 (a) In the event it determines that any of the regulations subject to the review
20 do not meet the standards set forth in Section 11349.1, the office shall within 15
21 days of the determination order the adopting agency to show cause why the
22 regulation should not be repealed. In issuing the order, the office shall specify in
23 writing the reasons for its determination that the regulation does not meet the
24 standards set forth in Section 11349.1. The reasons for its determination shall be
25 made available to the public. The office shall also publish its order and the reasons
26 therefor in the California Regulatory Notice Register. In the case of a regulation
27 for which no, or inadequate, information relating to its necessity can be furnished
28 by the adopting agency, the order shall specify the information which the office
29 requires to make its determination.

30 (b) No later than 60 days following receipt of an order to show cause why a
31 regulation should not be repealed, the agency shall respond in writing to the
32 office. Upon written application by the agency, the office may extend the time for
33 an additional 30 days.

34 (c) The office shall review and consider all information submitted by the agency
35 in a timely response to the order to show cause why the regulation should not be
36 repealed, and determine whether the regulation meets the standards set forth in
37 Section 11349.1. The office shall make this determination within 60 days of
38 receipt of an agency's response to the order to show cause. If the office does not
39 make a determination within 60 days of receipt of an agency's response to the
40 order to show cause, the regulation shall be deemed to meet the standards set
41 forth in subdivision (a) of Section 11349.1. In making this determination, the
42 office shall also review any written comments submitted to it by the public within

1 30 days of the publication of the order to show cause in the California
2 Regulatory Notice Register. During the period of review and consideration, the
3 information available to the office relating to each regulation for which the office
4 has issued an order to show cause shall be made available to the public. The
5 office shall notify the adopting agency within two working days of the receipt of
6 information submitted by the public regarding a regulation for which an order to
7 show cause has been issued. If the office determines that a regulation fails to meet
8 the standards, it shall prepare a statement specifying the reasons for its
9 determination. The statement shall be delivered to the adopting agency, the
10 Legislature, and the Governor and shall be made available to the public and the
11 courts. Thirty days after delivery of the statement required by this subdivision the
12 office shall prepare an order of repeal of the regulation and shall transmit it to the
13 Secretary of State for filing.

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

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

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

25 **Gov't Code § 11349.8 (unchanged). Repeal for lack of statutory authority**

26 11349.8. (a) If the office is notified of, or on its own becomes aware of, an
27 existing regulation in the California Code of Regulations for which the statutory
28 authority has been repealed or becomes ineffective or inoperative by its own
29 terms, the office shall order the adopting agency to show cause why the
30 regulation should not be repealed for lack of statutory authority and shall notify
31 the Legislature in writing of this order. In issuing the order, the office shall specify
32 in writing the reasons for issuance of the order. "Agency," for purposes of this
33 section and Section 11349.9, refers to the agency that adopted the regulation
34 and, if applicable, the agency that is responsible for administering the regulation
35 in issue.

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

41 (1) The statute or section thereof is simultaneously repealed and substantially
42 reenacted through a single piece of legislation, or where subsequent legislation

1 evinces a specific legislative intent to reenact the substance of the statute or
2 section. When a regulation cites more than one specific statute or section as
3 reference or authority for the adoption of a regulation, and one or more of the
4 statutes or sections are repealed or become ineffective or inoperative, then the
5 only provisions of the regulation which remain in effect shall be those for which
6 the remaining statutes or sections provide specific or general authority.

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

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

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

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

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

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

34 (e) The office shall order the removal of the repealed regulation from the
35 California Code of Regulations within 30 days after filing the Notice of Repeal, if
36 the agency has not appealed the office's decision, or upon receipt of notification
37 of the Governor's decision upholding the office's decision, if an appeal has been
38 filed pursuant to Section 11349.9.

39 **Gov't Code § 11349.9 (unchanged). Review of repeal pursuant to Section 11349.8**

40 11349.9. (a) To initiate a review of the office's Notice of Repeal pursuant to
41 Section 11349.8, the agency shall appeal the office's decision by filing a written
42 Request for Review with the Governor's Legal Affairs Secretary within 10 days

1 of receipt of the Notice of Repeal and written decision provided for by paragraph
2 (2) of subdivision (d) of Section 11349.8. The Request for Review shall include a
3 complete statement as to why the agency believes the decision is incorrect and
4 should be overruled. Along with the Request for Review, the agency shall submit
5 all of the following:

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

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

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

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

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

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

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

27 Article 8. Judicial Review

28 **Gov't Code § 11350 (amended). Judicial review of validity of regulation**

29 SEC. _____. Section 11350 of the Government Code is amended to read:

30 11350. (a) Any interested person may obtain a judicial declaration as to the
31 validity of any regulation or order of repeal by bringing an action for declaratory
32 relief in the superior court in accordance with the Code of Civil Procedure. The
33 right to judicial determination shall not be affected by the failure either to petition
34 or to seek reconsideration of a petition filed pursuant to Section 11340.7 before
35 the agency promulgating the ~~regulations~~ regulation or order of repeal. The
36 regulation or order of repeal may be declared to be invalid for a substantial failure
37 to comply with this chapter, or, in the case of an emergency regulation or order to
38 repeal, upon the ground that the facts recited in the statement prepared pursuant
39 to subdivision (b) of Section 11346.1 do not constitute an emergency within the
40 provisions of Section 11346.1.

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

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

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

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

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

15 (d) The record of review in a proceeding under this section shall be limited to
16 the following material:

17 (1) The rulemaking file prepared under Section 11347.3.

18 (2) The written statement prepared under paragraph (b) of Section 11346.1.

19 (3) Evidence of a procedural defect in the adoption, amendment, or repeal of the
20 regulation.

21 **Comment.** Section 11350 is amended to provide for judicial review of an order of repeal,
22 as well as a regulation. This is consistent with the provision authorizing review of an
23 emergency order of repeal.

24 Subdivision (a) is amended to eliminate an ambiguity regarding the statement an agency
25 prepares on proposing an emergency regulation. This change is technical and is not intended
26 to affect the meaning of the section.

27 Subdivision (d) is added to clarify the record of review in a proceeding under this section.
28 Subdivision (d)(1) restates part of the substance of the former second paragraph of Section
29 11350(b)(2), limiting the record of review to the rulemaking file prepared under Section
30 11347.3. Subdivision (d)(2) permits consideration of an agency statement prepared under
31 Section 11346.1(b) (justifying emergency regulation). Such a statement is not part of a
32 rulemaking file prepared under Section 11347.3. See Section 11346.1(a). Subdivision (d)(3)
33 permits consideration of evidence of procedural noncompliance. This is necessary where
34 proof of procedural noncompliance depends on material that is not included in the
35 rulemaking file. E.g., proof that an agency failed to include written public comments in a
36 rulemaking file requires consideration of the excluded comments. Also, where it is asserted
37 that an agency statement is an invalid "underground regulation" (i.e., it should have been
38 adopted under this chapter but was not), the court will need to consider the text of the
39 purported underground regulation in order to determine whether it is, in fact, a regulation
40 subject to this chapter.

41 **Gov't Code § 11350.3 (amended). Review of regulation disapproved by Office of**
42 **Administrative Law**

43 SEC. ____ Section 11350.3 of the Government Code is amended to read:

44 11350.3. Any interested person may obtain a judicial declaration as to the
45 validity of a regulation or order of repeal which the office has disapproved ~~or~~
46 ~~ordered repealed~~ pursuant to Section 11349.3, or 11349.6, or of a regulation that

1 has been ordered repealed pursuant to Section 11349.7 by bringing an action for
2 declaratory relief in the superior court in accordance with the Code of Civil
3 Procedure. The court may declare the regulation valid if it determines that the
4 regulation meets the standards set forth in Section 11349.1 and that the agency
5 has complied with this chapter. If the court so determines, it may order the office
6 to immediately file the regulation with the Secretary of State.

7 **Comment.** Section 11350.3 is amended to provide for judicial review of an order of repeal
8 that is disapproved by the Office of Administrative Law.

9 Article 9. Special Procedures

10 **Gov't Code § 11351 (unchanged). Public Utilities Commission and Worker's**
11 **Compensation Appeals Board**

12 11351. (a) Except as provided in subdivision (b), Article 5 (commencing with
13 Section 11346), Article 6 (commencing with Section 11349), Article 7
14 (commencing with Section 11349.7), and Article 8 (commencing with Section
15 11350) shall not apply to the Public Utilities Commission or the Workers'
16 Compensation Appeals Board, and Article 3 (commencing with Section 11343)
17 and Article 4 (commencing with Section 11344) shall apply only to the rules of
18 procedure of these state agencies.

19 (b) The Public Utilities Commission and the Workers' Compensation Appeals
20 Board shall comply with paragraph (5) of subdivision (a) of Section 11346.4 with
21 respect to regulations that are required to be filed with the Secretary of State
22 pursuant to Section 11343.

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

25 **Gov't Code § 11352 (unchanged). Water quality certification and waste discharge**
26 **requirements**

27 11352. The following actions are not subject to this chapter:

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

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

33 **Gov't Code § 11353 (amended). State water quality control policies, plans, and guidelines**

34 SEC. _____. Section 11353 of the Government Code is amended to read:

35 11353. (a) Except as provided in subdivision (b), this chapter does not apply to
36 the adoption or revision of state policy for water quality control and the adoption
37 or revision of water quality control plans and guidelines pursuant to Division 7
38 (commencing with Section 13000) of the Water Code.

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

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

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

9 (B) The administrative record for the proceeding. Proposed additions to a
10 policy, plan, or guideline shall be indicated by underlined text and proposed
11 deletions shall be indicated by strike-through text in documents submitted as part
12 of the administrative record for the proceeding.

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

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

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

21 (4) The office shall review the regulatory provisions to determine compliance
22 with the standards of necessity, authority, clarity, consistency, reference, and
23 nonduplication set forth in subdivision (a) of Section 11349.1. The office shall
24 also review the responses to public comments prepared by the State Water
25 Resources Control Board or the appropriate regional water quality control board
26 to determine compliance with the public participation requirements of the Federal
27 Water Pollution Control Act (33 U.S.C. Sec. 1251 et seq.). The office shall restrict
28 its review to the regulatory provisions and the administrative record of the
29 proceeding. Sections 11349.3, 11349.4, 11349.5, and 11350.3 shall apply to the
30 review by the office to the extent that those sections are consistent with this
31 section.

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

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

38 (7) Any proceedings before the State Water Resources Control Board or a
39 California regional water quality control board to take any action subject to this
40 subdivision shall be conducted in accordance with the procedural requirements
41 of Division 7 (commencing with Section 13000) of the Water Code, together with
42 any applicable requirements of the Federal Water Pollution Control Act (33
43 U.S.C. Sec. 1251 et seq.), and the requirements of this chapter, other than the

1 requirement for review by the office in accordance with this subdivision, shall not
2 apply.

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

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

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

18 **Comment.** Subdivision (b)(2)(B) of Section 11353 is amended to require that amendments
19 and deletions be clearly indicated in material submitted to the Office of Administrative Law
20 for review. For a similar provision, see Section 11354.1(d)(2)(B) (underscore and strike-
21 through required to indicate changes in plans of San Francisco Bay Conservation and
22 Development Commission).

23 **Gov't Code § 11354 (unchanged). Application of Sections 11352 and 11353**

24 11354. Sections 11352 and 11353 do not affect any court's determination,
25 relating to the applicability of this chapter to any provision of a policy, plan, or
26 guideline, in a civil action which was pending on June 1, 1992, and on that date
27 included a challenge to a provision of a policy, plan, or guideline on the grounds
28 that it has not been adopted in accordance with this chapter.

29 **Gov't Code § 11354.1 (unchanged). San Francisco Bay Conservation and Development**
30 **Commission**

31 11354.1. (a) For purposes of this section, "commission" means the San
32 Francisco Bay Conservation and Development Commission.

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

37 (c) The issuance or denial by the commission of any permit pursuant to
38 subdivision (a) of Section 66632, and the issuance or denial by, or appeal to, the
39 commission of any permit pursuant to Chapter 6 (commencing with Section
40 29500) of Division 19 of the Public Resources Code, are not subject to this
41 chapter.

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

8 (2) The commission shall include in its submittal to the office pursuant to
9 paragraph (1) both of the following documents:

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

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

18 (3) The office shall review the regulatory provisions to determine compliance
19 with the standards of necessity, authority, clarity, consistency, reference, and
20 nonduplication set forth in subdivision (a) of Section 11349.1. The office shall
21 also review the responses to public comments prepared by the commission to
22 determine compliance with the public participation requirements of Sections
23 11000 to 11007, inclusive, of Title 14 of the California Code of Regulations, and
24 to ensure that the commission considers all relevant matters presented to it before
25 adopting, amending, or repealing any regulatory provision, and that the
26 commission explains the reasons for not modifying a proposed plan change to
27 accommodate an objection or recommendation. The office shall restrict its review
28 to the regulatory provisions and the administrative record of the proceeding.
29 Sections 11349.3, 11349.4, 11349.5, and 11350.3 shall apply to the review by the
30 office to the extent that those sections are consistent with this section.

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

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

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

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

1 **Gov't Code § 11356 (amended). Building standards or regulations**

2 SEC. _____. Section 11356 of the Government Code is amended to read:

3 11356. (a) Article 6 (commencing with Section 11349) is not applicable to any
4 ~~building standards or administrative regulations that apply directly to the~~
5 ~~implementation or enforcement of a building standard, subject to the approval of~~
6 ~~the State Building Standards Commission a building standard.~~

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

12 **Comment.** Section 11343(a) is amended to eliminate the implication that the exemption of
13 building standards from review by the Office of Administrative Law is conditioned on
14 approval of the California Building Standards Commission. Note, however, that building
15 standards are subject to review by the California Building Standards Commission under
16 Health and Safety Code Section 18930. The subdivision is also amended to use the defined
17 term "building standard." See Section 11342.530 ("building standard" defined).

18 Subdivision (b) is amended to reflect the change in the name of the California Building
19 Standards Commission.

20 **Gov't Code § 11357 (unchanged). Department of Finance instructions**

21 11357. (a) The Department of Finance shall adopt and update, as necessary,
22 instructions for inclusion in the State Administrative Manual prescribing the
23 methods that any agency subject to this chapter shall use in making the
24 determination required by paragraph (5) and the estimate required by paragraph
25 (6) of subdivision (a) of Section 11346.5. The instructions shall include, but need
26 not be limited to, the following:

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

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

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

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

41 (b) Any action by the Department of Finance to adopt and update, as necessary,
42 instructions to any state or local agency for the preparation, development, or

1 administration of the state budget, including any instructions included in the
2 State Administrative Manual, shall be exempt from this chapter.

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

6 **Gov't Code § 11359 (unchanged). Fire and panic safety regulations**

7 11359. (a) Except as provided in subdivision (b), on and after January 1, 1982,
8 no new regulation, or the amendment or repeal of any regulation, which
9 regulation is intended to promote fire and panic safety or provide fire protection
10 and prevention, including fire suppression systems, equipment, or alarm
11 regulation, is valid or effective unless it is submitted by, or approved in writing by,
12 the State Fire Marshal before transmittal to the Secretary of State or the Office of
13 Administrative Law.

14 (b) Approval of the State Fire Marshal is not required if the regulation is
15 expressly required to be at least as effective as federal standards published in the
16 Federal Register pursuant to Section 6 of the Occupational Safety and Health Act
17 of 1970 (P.L. 91-596) within the time period specified by federal law and as
18 provided in subdivision (b) of Section 142.4 of the Labor Code, and as approved
19 by the Occupational Safety and Health Administration of the United States
20 Department of Labor as meeting the requirements of subdivision (a) of Section
21 142.3 of the Labor Code, unless the regulation is determined by the State Fire
22 Marshal to be less effective in promoting fire and panic safety than regulations
23 adopted by the State Fire Marshal.

CONFORMING REVISIONS

1 **Fin. Code § 3373 (amended). Changes to federal regulations**

2 SEC. _____. Section 3373 of the Financial Code is amended to read:

3 3373. (a) Notwithstanding any other provisions of this article, whenever
4 Section 215.2, 215.3, 215.4, 215.5, 215.7, or 215.8 is changed by the Board of
5 Governors of the Federal Reserve System, the commissioner may by regulation
6 adopt that same change. Any regulation adopted under this section shall expire at
7 12 p.m. on December 31 of the year following the calendar year in which it
8 becomes effective.

9 (b)(1) Section 11343.4 and Article 5 (commencing with Section 11346) and
10 Article 6 (commencing with Section 11349) of Chapter 3.5 of Part 1 of Division 3
11 of Title 2 of the Government Code do not apply to any regulation adopted under
12 subdivision (a).

13 (2) The commissioner shall file any regulation adopted pursuant to subdivision
14 (a), together with a citation to subdivision (a) as authority for the adoption and a
15 citation to the provisions of federal law made applicable by the regulation, with
16 the Office of Administrative Law for filing with the Secretary of State and
17 publication in the California Code of Regulations.

18 (3) A regulation adopted under subdivision (a) shall become effective on the
19 date when it is filed with the Secretary of State unless the commissioner
20 prescribes a later date in the regulation or in a written instrument filed with the
21 regulation.

22 (c) A regulation adopted pursuant to subdivision (a) does not expire as
23 provided by subdivision (a) and is not subject to subdivision (b) if the
24 commissioner complies with all of the provisions of Chapter 3.5 (commencing
25 with Section 11340) of Part 1 of Division 3 of the Government Code in adopting
26 the regulation, including those listed in paragraph (1) of subdivision (b).

27 **Comment.** Section 3373 is amended to provide a rule governing the effective date of
28 regulations adopted under subdivision (a). This rule is consistent with the rule that applied
29 before regulations adopted under this section were exempted from Government Code Section
30 11343.4.

31 **Gov't Code § 27491.41 (technical amendment). Sudden infant death syndrome**

32 SEC. _____. Section 27491.41 of the Government Code is amended to read:

33 27491.41. (a) For purposes of this section, "sudden infant death syndrome"
34 means the sudden death of any infant that is unexpected by the history of the
35 infant and where a thorough postmortem examination fails to demonstrate an
36 adequate cause of death.

37 (b) The Legislature finds and declares that sudden infant death syndrome
38 (SIDS) is the leading cause of death for children under age one, striking one out
39 of every 500 children. The Legislature finds and declares that sudden infant

1 death syndrome is a serious problem within the State of California, and that public
2 interest is served by research and study of sudden infant death syndrome, and its
3 potential causes and indications.

4 (c) To facilitate these purposes, the coroner shall, within 24 hours, or as soon
5 thereafter as feasible, perform an autopsy in any case where an infant has died
6 suddenly and unexpectedly.

7 (d) The autopsy shall be conducted pursuant to a standardized protocol
8 developed by the State Department of Health Services. The protocol is exempt
9 from the procedural requirements pertaining to the adoption of administrative
10 rules and regulations pursuant to ~~Article 2 (commencing with Section 11342)~~
11 Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3
12 of Title 2 of the Government Code. The protocol shall be developed and
13 approved by July 1, 1990.

14 (e) The protocol shall be followed by all coroners throughout the state when
15 conducting the autopsies required by this section. The coroner shall state on the
16 certificate of death that sudden infant death syndrome was the cause of death
17 when the coroner's findings are consistent with the definition of sudden infant
18 death syndrome specified in the standardized autopsy protocol. The protocol may
19 include requirements and standards for scene investigations, requirements for
20 specific data, criteria for ascertaining cause of death based on the autopsy, and
21 criteria for any specific tissue sampling, and any other requirements. The protocol
22 may also require that specific tissue samples must be provided to a central tissue
23 repository designated by the State Department of Health Services.

24 (f) The State Department of Health Services shall establish procedures and
25 protocols for access by researchers to any tissues, or other materials or data
26 authorized by this section. Research may be conducted by any individual with a
27 valid scientific interest and prior approval from the State Committee for the
28 Protection of Human Subjects. The tissue samples, the materials, and all data shall
29 be subject to the confidentiality requirements of Section 103850 of the Health
30 and Safety Code.

31 (g) The coroner may take tissue samples for research purposes from infants who
32 have died suddenly and unexpectedly without consent of the responsible adult if
33 the tissue removal is not likely to result in any visible disfigurement.

34 (h) A coroner shall not be liable for damages in a civil action for any act or
35 omission done in compliance with this section.

36 (i) No consent of any person is required prior to undertaking the autopsy
37 required by this section. However, if the physician of record certifies the cause of
38 death is sudden infant death syndrome and the parents object to an autopsy on
39 religious or ethical grounds, no autopsy shall be required.

40 **Comment.** Section 27491.41 is amended to correct an erroneous reference to former
41 Article 2 (commencing with Section 11342) of Chapter 3.5 of Part 1 of Division 3 of Title 2
42 of the Government Code. This is a technical, nonsubstantive change.

1 **Health & Safety Code § 33427 (technical amendment). Small business incubator**

2 SEC. _____. Section 33427 of the Health and Safety Code is amended to read:

3 33427. (a) In addition to any other authority granted under this part, an agency
4 may, within a project area, for the purposes of redevelopment, assist public
5 agencies or private nonprofit corporations to establish and maintain a small
6 business incubator.

7 (b) In addition to any other authority granted under this part, an agency may,
8 for the purposes of redevelopment, provide loan guarantees for small businesses
9 located within a project area.

10 (c) For the purposes of this section, “small business” shall have the same
11 meaning as defined in Section 11342 11342.600 of the Government Code.

12 (d) This section shall apply only to a project area that is located within the City
13 of Healdsburg, the City of Long Beach, the City of Los Angeles, the City of
14 Oakland, or the City of Signal Hill. Any agency operating within one of those
15 cities which uses the authority granted by this section shall separately identify
16 those actions in the annual report to its legislative body prepared pursuant to
17 Section 33080.1.

18 (e) No agency may amend a redevelopment plan to increase the tax increment
19 revenue limit pursuant to Section 33333.2 or 33333.4 for the purpose of
20 implementing this section.

21 **Comment.** Section 33427 is amended to substitute reference to the Government Code
22 provision that replaced former Government Code Section 11342(h). This is a technical,
23 nonsubstantive change.

24
25 **Health & Safety Code § 57004 (technical amendment). External scientific peer review of**
26 **proposed rules**

27 SEC. _____. Section 57004 of the Health and Safety Code is amended to read:

28 57004. (a) For purposes of this section, the following terms have the following
29 meaning:

30 (1) “Rule” means either of the following:

31 (A) A regulation, as defined in ~~subdivision (g) of Section 11342~~ Section
32 11342.590 of the Government Code.

33 (B) A policy adopted by the State Water Resources Control Board pursuant to
34 the Porter-Cologne Water Quality Control Act (Division 7 (commencing with
35 Section 13000) of the Water Code) that has the effect of a regulation and that is
36 adopted in order to implement or make effective a statute.

37 (2) “Scientific basis” and “scientific portions” means those foundations of a
38 rule that are premised upon, or derived from, empirical data or other scientific
39 findings, conclusions, or assumptions establishing a regulatory level, standard, or
40 other requirement for the protection of public health or the environment.

41 (b) The agency, or a board, department, or office within the agency, shall enter
42 into an agreement with the National Academy of Sciences, the University of

1 California, the California State University, or any similar scientific institution of
2 higher learning, any combination of those entities, or with a scientist or group of
3 scientists of comparable stature and qualifications that is recommended by the
4 President of the University of California, to conduct an external scientific peer
5 review of the scientific basis for any rule proposed for adoption by any board,
6 department, or office within the agency. The scientific basis or scientific portion
7 of a rule adopted pursuant to Chapter 6.6 (commencing with Section 25249.5) of
8 Division 20 or Chapter 3.5 (commencing with Section 39650) of Division 26 shall
9 be deemed to have complied with this section if it complies with the peer review
10 processes established pursuant to these statutes.

11 (c) No person may serve as an external scientific peer reviewer for the scientific
12 portion of a rule if that person participated in the development of the scientific
13 basis or scientific portion of the rule.

14 (d) No board, department, or office within the agency shall take any action to
15 adopt the final version of a rule unless all of the following conditions are met:

16 (1) The board, department, or office submits the scientific portions of the
17 proposed rule, along with a statement of the scientific findings, conclusions, and
18 assumptions on which the scientific portions of the proposed rule are based and
19 the supporting scientific data, studies, and other appropriate materials, to the
20 external scientific peer review entity for its evaluation.

21 (2) The external scientific peer review entity, within the timeframe agreed upon
22 by the board, department, or office and the external scientific peer review entity,
23 prepares a written report that contains an evaluation of the scientific basis of the
24 proposed rule. If the external scientific peer review entity finds that the board,
25 department, or office has failed to demonstrate that the scientific portion of the
26 proposed rule is based upon sound scientific knowledge, methods, and practices,
27 the report shall state that finding, and the reasons explaining the finding, within
28 the agreed-upon timeframe. The board, department, or office may accept the
29 finding of the external scientific peer review entity, in whole, or in part, and may
30 revise the scientific portions of the proposed rule accordingly. If the board,
31 department, or office disagrees with any aspect of the finding of the external
32 scientific peer review entity, it shall explain, and include as part of the rulemaking
33 record, its basis for arriving at such a determination in the adoption of the final
34 rule, including the reasons why it has determined that the scientific portions of
35 the proposed rule are based on sound scientific knowledge, methods, and
36 practices.

37 (e) The requirements of this section do not apply to any emergency regulation
38 adopted pursuant to subdivision (b) of Section 11346.1 of the Government Code.

39 (f) Nothing in this section shall be interpreted to, in any way, limit the authority
40 of a board, department, or office within the agency to adopt a rule pursuant to the
41 requirements of the statute that authorizes or requires the adoption of the rule.

1 **Comment.** Section 57004 is amended to substitute reference to the Government Code
2 provision that continues the definition of “regulation” in former Government Code Section
3 11342(g). This is a technical, nonsubstantive change.

4 **Penal Code § 5058 (technical amendment). Rulemaking**

5 SEC. _____. Section 5058 of the Penal Code is amended to read:

6 5058. (a) The director may prescribe and amend rules and regulations for the
7 administration of the prisons and for the administration of the parole of persons
8 sentenced under Section 1170 except those persons who meet the criteria set
9 forth in Section 2962. The rules and regulations shall be promulgated and filed
10 pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3
11 of Title 2 of the Government Code, except as otherwise provided in this section.
12 All rules and regulations shall, to the extent practical, be stated in language that is
13 easily understood by the general public.

14 For any rule or regulation filed as regular rulemaking as defined in paragraph (5)
15 of subdivision (a) of Section 1 of Title 1 of the California Code of Regulations,
16 copies of the rule or regulation shall be posted in conspicuous places throughout
17 each institution and shall be mailed to all persons or organizations who request
18 them no less than 20 days prior to its effective date.

19 (b) The director shall maintain, publish and make available to the general public,
20 a compendium of the rules and regulations promulgated by the director or
21 director’s designee pursuant to this section.

22 (c) The following are deemed not to be “regulations” as defined in subdivision
23 ~~(b) of Section 11342~~ Section 11342.590 of the Government Code:

24 (1) Rules issued by the director or by the director’s designee applying solely to
25 a particular prison or other correctional facility, provided that the following
26 conditions are met:

27 (A) All rules that apply to prisons or other correctional facilities throughout the
28 state are adopted by the director pursuant to Chapter 3.5 (commencing with
29 Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

30 (B) All rules except those that are excluded from disclosure to the public
31 pursuant to subdivision (f) of Section 6254 of the Government Code are made
32 available to all inmates confined in the particular prison or other correctional
33 facility to which the rules apply and to all members of the general public.

34 (2) Short-term criteria for the placement of inmates in a new prison or other
35 correctional facility, or subunit thereof, during its first six months of operation, or
36 in a prison or other correctional facility, or subunit thereof, planned for closing
37 during its last six months of operation, provided that the criteria are made
38 available to the public and that an estimate of fiscal impact is completed pursuant
39 to Section 6055, and following, of the State Administrative Manual dated July
40 1986.

1 (3) Rules issued by the director or director's designee that are excluded from
2 disclosure to the public pursuant to subdivision (f) of Section 6254 of the
3 Government Code.

4 (d) The following regulations are exempt from Chapter 3.5 (commencing with
5 Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code under
6 the conditions specified:

7 (1) Regulations adopted by the director or the director's designee applying to
8 any legislatively mandated or authorized pilot program or a departmentally
9 authorized pilot program, provided that an estimate of fiscal impact is completed
10 pursuant to Section 6055, and following, of the State Administrative Manual
11 dated July 1986, and that the following conditions are met:

12 (A) A pilot program affecting male inmates only shall affect no more than 10
13 percent of the total state male inmate population; a pilot program affecting female
14 inmates only shall affect no more than 10 percent of the total state female inmate
15 population; and a pilot program affecting male and female inmates shall affect no
16 more than 10 percent of the total state inmate population.

17 (B) The director certifies in writing that the regulations apply to a pilot program
18 that qualifies for exemption under this subdivision.

19 (C) The certification and regulations are filed with the Office of Administrative
20 Law and the regulations are made available to the public by publication pursuant
21 to subparagraph (F) of paragraph (2) of subdivision (b) of Section 6 of Title 1 of
22 the California Code of Regulations.

23 The regulations shall become effective immediately upon filing with the
24 Secretary of State and shall lapse by operation of law two years after the date of
25 the director's certification unless formally adopted by the director pursuant to
26 Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of
27 the Government Code.

28 (2) Action or actions, or policies implementing them, taken by the department
29 and based upon a determination of imminent danger by the director or the
30 director's designee that there is a compelling need for immediate action, and that
31 unless that action is taken, serious injury, illness, or death is likely to result. The
32 action or actions, or policies implementing them, may be taken provided that the
33 following conditions shall subsequently be met:

34 (A) A written determination of imminent danger shall be issued describing the
35 compelling need and why the specific action or actions must be taken to address
36 the compelling need.

37 (B) The written determination of imminent danger shall be mailed within 10
38 working days to every person who has filed a request for notice of regulatory
39 actions with the department and to the Chief Clerk of the Assembly and the
40 Secretary of the Senate for referral to the appropriate policy committees.

41 Any policy in effect pursuant to a determination of imminent danger shall lapse
42 by operation of law 15 calendar days after the date of the written determination
43 of imminent danger unless an emergency regulation is filed with the Office of

1 Administrative Law pursuant to subdivision (e). This section shall in no way
2 exempt the department from compliance with other provisions of law related to
3 fiscal matters of the state.

4 (e) Emergency regulations shall be adopted pursuant to Chapter 3.5
5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the
6 Government Code, except that:

7 (1) Notwithstanding subdivision (e) of Section 11346.1 of the Government
8 Code, the initial effective period for emergency regulations shall be 160 days.

9 (2) No showing of emergency is necessary in order to adopt emergency
10 regulations other than a written statement by the director or the director's
11 designee, to be filed with the Office of Administrative Law, certifying that
12 operational needs of the department require adoption of the regulations on an
13 emergency basis.

14 (3) This subdivision shall apply only to the adoption and one re-adoption of any
15 emergency regulation.

16 It is the intent of the Legislature, in authorizing the deviations in this
17 subdivision from the requirements and procedures of Chapter 3.5 (commencing
18 with Section ~~113340~~ 11340) of Part 1 of Division 3 of Title 2 of the Government
19 Code, to authorize the department to expedite the exercise of its power to
20 implement regulations as its unique operational circumstances require.

21 **Comment.** Section 5058 is amended to substitute reference to the Government Code
22 provision that continues the definition of "regulation" in former Government Code Section
23 11342(g) and to correct an erroneous reference in subdivision (e)(3). These are technical,
24 nonsubstantive changes.

25
26 **Pub. Res. Code § 25620.2 (technical amendment). Administration of program**

27 SEC. _____. Section 25620.2 of the Public Resources Code is amended to read:

28 25620.2. (a) The commission shall administer the program in a manner that is
29 consistent with the purposes of Chapter 854 of the Statutes of 1996, and shall
30 ensure that the program meets all of the following criteria:

31 (1) Demonstrates a balance of benefits to all sectors that contribute to the
32 funding under Section 381 of the Public Utilities Code.

33 (2) Addresses key technical and scientific barriers.

34 (3) Demonstrates a balance between short-term, mid-term, and long-term
35 potential.

36 (4) Ensures that research currently, previously, or about to be undertaken by
37 research organizations is not unnecessarily duplicated.

38 (b) To ensure the efficient implementation and administration of the program,
39 the commission shall do both of the following:

40 (1) Develop procedures for the solicitation of award applications for project or
41 program funding, and to ensure efficient program management.

1 (2) Evaluate and select programs and projects, based on merit, that will be
2 funded under the program.

3 (c) To ensure the success of electric industry restructuring in the transition to a
4 new market structure and to implement the program, the commission shall adopt
5 regulations, as defined in ~~subdivision (g) of Section 11342~~ Section 11342.590 of
6 the Government Code, in accordance with the following procedures:

7 (1) Prepare a preliminary text of the proposed regulation and provide a copy of
8 the preliminary text to any person requesting a copy.

9 (2) Provide public notice of the proposed regulation to any person who has
10 requested notice of the regulations prepared by the commission. The notice shall
11 contain all of the following:

12 (A) A clear overview explaining the proposed regulation.

13 (B) Instructions on how to obtain a copy of the proposed regulations.

14 (C) A statement that if a public hearing is not scheduled for the purpose of
15 reviewing a proposed regulation, any person may request, not later than 15 days
16 prior to the close of the written comment period, a public hearing conducted in
17 accordance with the procedures set forth in Section 11346.8 of the Government
18 Code.

19 (D) A deadline for the submission of written comments.

20 (3) Accept written public comments for 30 calendar days after providing the
21 notice required in paragraph (2).

22 (4) Certify that all written comments were read and considered by the
23 commission.

24 (5) Place all written comments in a record that includes copies of any written
25 factual support used in developing the proposed regulation, including written
26 reports and copies of any transcripts or minutes in connection with any public
27 hearings on the adoption of the regulation. The record shall be open to public
28 inspection and available to the courts.

29 (6) Provide public notice of any substantial revision of the proposed regulation
30 at least 15 days prior to the expiration of the deadline for public comments and
31 comment period using the procedures provided in paragraph (2).

32 (7) Conduct public hearings, if a hearing is requested by an interested party,
33 that shall be conducted in accordance with the procedures set forth in Section
34 11346.8 of the Government Code.

35 (8) Adopt any proposed regulation at a regularly scheduled and noticed
36 meeting of the commission. The regulation shall become effective immediately
37 unless otherwise provided by the commission.

38 (9) Publish any adopted regulation in a manner that makes copies of the
39 regulation easily available to the public. Any adopted regulation shall also be
40 made available on the Internet. The commission shall transmit a copy of an
41 adopted regulation to the Office of Administrative Law for publication, or, if the
42 commission determines that printing the regulation is impractical, an appropriate
43 reference as to where a copy of the regulation may be obtained.

1 (10) Notwithstanding any other provision of law, this subdivision provides an
2 interim exception from the requirements of Chapter 3.5 (commencing with
3 Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code for
4 regulations required to implement Sections 25621 and 25622 that are adopted
5 under the procedures specified in this subdivision.

6 (11) This subdivision shall become inoperative on January 1, 2000, unless a later
7 enacted statute deletes or extends that date. However, after January 1, 2000, the
8 commission shall not be required to repeat any procedural step in adopting a
9 regulation that has been completed before January 1, 2000, using the procedures
10 specified in this subdivision.

11 **Comment.** Section 25620.2 is amended to substitute reference to the Government Code
12 provision that continues the definition of “regulation” in former Government Code Section
13 11342(g). This is a technical, nonsubstantive change.

14 **Welf. & Inst. Code § 11462.4 (technical amendment). Community care facility deemed**
15 **small business**

16 SEC. _____. Section 11462.4 of the Welfare and Institutions Code is amended to
17 read:

18 11462.4. Notwithstanding Section ~~11342~~ 11342.600 of the Government Code,
19 group homes and foster family agencies shall be deemed small businesses and the
20 department shall project the impact on group homes and foster family agencies of
21 any new regulations which will affect those community care facilities.

22 **Comment.** Section 11462.4 is amended to substitute reference to the Government Code
23 provision that continues the definition of “small business” in former Government Code
24 Section 11342(h). This is a technical, nonsubstantive change.