

STATE OF CALIFORNIA

# CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

Administrative Rulemaking

October 1999

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

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October 1999

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4000 Middlefield Road, Room D-1  
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NOTE

This report includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were already operative, since their primary purpose is to explain the law as it will exist to those who will have occasion to use it after it is operative.

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## CONTENTS

|  |         |
|--|---------|
| Letter of Transmittal . . . . .  | 463     |
| Recommendation . . . . .   | 465     |
| ELECTRONIC COMMUNICATIONS . . . . .  | 465     |
| RULEMAKING PROCEDURE . . . . .   | 466     |
| Pre-Adoption Public Input . . . . .  | 466     |
| Preliminary Agency Determinations . . . . .                                      | 466     |
| Regulation that Imposes Report Requirement on Business . . . . .                 | 467     |
| Plain English Requirement . . . . .  | 467     |
| Public Hearing . . . . .   | 468     |
| Response to Comments . . . . .   | 468     |
| Rulemaking File . . . . .  | 469     |
| Application of Requirements to Repeals . . . . .                                 | 470     |
| Emergency Rulemaking . . . . .   | 471     |
| EXCEPTIONS TO RULEMAKING REQUIREMENTS . . . . .                                  | 472     |
| Agency Rules That Should Not Be Disclosed Publicly . . . . .                     | 472     |
| Agency Rule That Is Only Tenable Interpretation of Provision of<br>Law . . . . . | 473     |
| NECESSITY STANDARD FOR REVIEW OF REGULATIONS . . . . .                           | 473     |
| Clarification of Meaning . . . . .   | 474     |
| Evidence Supporting Determination . . . . .                                      | 474     |
| PERIOD FOR REVIEW OF EMERGENCY REGULATION . . . . .                              | 475     |
| JUDICIAL REVIEW OF REGULATIONS . . . . .   | 475     |
| MISCELLANEOUS TECHNICAL IMPROVEMENTS . . . . .                                   | 476     |
| <br>Contents of Proposed Legislation . . . . .                                   | <br>479 |
| <br>Proposed Legislation . . . . .   | <br>483 |
| <br>Conforming Revisions . . . . .   | <br>563 |



STATE OF CALIFORNIA

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**CALIFORNIA LAW REVISION COMMISSION**

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October 15, 1999

To: The Honorable Gray Davis  
*Governor of California*, and  
The Legislature of California

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) Minor improvements to the rulemaking procedure.
- (3) Refinements to the exceptions to the rulemaking requirements.

This recommendation is submitted pursuant to Resolution Chapter 81 of the Statutes of 1999.

Respectfully submitted,

Howard Wayne  
*Chairperson*





## ADMINISTRATIVE RULEMAKING

The rulemaking provisions of the Administrative Procedure Act (APA) govern the adoption, publication, review, and use of state agency regulations.<sup>1</sup> 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 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.<sup>2</sup>

## 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 web-

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1. Gov't Code §§ 11340-11359. All further statutory references are to the Government Code, unless otherwise indicated.

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."

sites to publish rulemaking notices on their websites.<sup>3</sup> Website publication supplements other required forms of publication.

## RULEMAKING PROCEDURE

The APA requires that regulations be adopted under a detailed public notice and comment procedure.<sup>4</sup> The proposed law contains the following revisions and clarifications of that process:

### **Pre-Adoption Public Input**

Under existing law, an agency may confer informally with interested persons in the process of developing a proposed regulation. The Commission has learned that some agencies do not understand that this is permitted. The proposed law expressly authorizes the practice.<sup>5</sup>

### **Preliminary Agency Determinations**

Existing law requires an agency's notice of proposed action and the accompanying initial statement of reasons to include preliminary agency determinations on a number of matters that can only be determined definitively after public comment and hearing have occurred.<sup>6</sup> The statute should be revised to make clear that these preliminary determinations may be made on the basis of the agency's belief.<sup>7</sup>

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3. See proposed Section 11340.8 *infra*.

4. Sections 11346-11347.3.

5. See proposed amendment to Section 11346 *infra*.

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

7. See proposed amendments to Sections 11346.2(b)(5), 11346.5(a)(7)-(8), (11) *infra*.

### **Regulation That Imposes Report Requirement on Business**

To adopt a regulation that will impose a report requirement on a business, an agency must make a finding that this is necessary for the health, safety, or welfare of the people of the state.<sup>8</sup> However, the statute does not indicate where the finding is to be reported.

The proposed law makes clear that the finding is to be included in the rulemaking notice.<sup>9</sup> This will put the public on notice that the proposed regulation will require businesses to file a report and will allow an interested person to comment on the required finding.

### **Plain English Requirement**

Existing law requires that a regulation that will affect small business must be drafted in plain English or a plain English summary of the regulation must be provided,<sup>10</sup> and the informative digest prepared by the agency concerning the regulation must include a plain English policy statement overview explaining its objectives.<sup>11</sup> These are beneficial provisions that should be extended to all regulations, not just those affecting small business. Other provisions applying to regulations that affect small business would also be extended to apply to all regulations.<sup>12</sup>

The statutory definition of “plain English” is difficult to apply.<sup>13</sup> The proposed law would define plain English as language that satisfies the “clarity” standard, i.e., that is easily

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8. Section 11346.3(c).

9. See proposed Section 11346.5(a)(11) *infra*.

10. Section 11346.2(a)(1).

11. Section 11346.5(a)(3)(B).

12. See proposed amendments to Sections 11346.2(b)(4)(B), 11346.9(a)(5) *infra*.

13. Section 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.”).

understood by persons who would be directly affected by it.<sup>14</sup> Existing law provides an enforcement mechanism for such a requirement by means of review by the Office of Administrative Law.<sup>15</sup>

### **Public Hearing**

Existing law provides for a public hearing on a proposed regulation.<sup>16</sup> An agency may elect not to hold a public hearing and instead receive written comments, but on timely demand by an interested person the agency must schedule a public hearing.<sup>17</sup> If a hearing is held, the agency must permit public comment that is “either oral or in writing, or both.”<sup>18</sup> A literal reading of this language suggests that an agency may preclude oral comment, and in fact this has occurred.<sup>19</sup>

The proposed law revises the statute to make clear that oral testimony must be allowed at a public hearing, subject to reasonable agency limitations.<sup>20</sup> This is consistent both with the general scheme of the rulemaking statute and with its purpose to promote effective public involvement in the rulemaking process.

### **Response to Comments**

An agency is required to respond to “each objection” made concerning a proposed regulation.<sup>21</sup> A response is only

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14. See Section 11349(c) (clarity standard for review of regulations).

15. Sections 11349-11349.6.

16. Sections 11346.4(a), 11346.5(a)(16), 11346.8, 11347.3(a)(8), 11349.4(a), 11349.6(d).

17. Section 11346.8(a).

18. *Id.*

19. 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).

20. See proposed amendment to Section 11346.8(a) *infra*.

21. Section 11346.9(a)(3).

required, however, if the comment is directed at the proposed action or the procedures followed by the agency.<sup>22</sup> Agency practice under these rules has been to aggregate and respond to repetitive comments as a group and to summarily dispose of comments that are irrelevant. The proposed law specifically recognizes this method of dealing with repetitive or irrelevant comments.<sup>23</sup>

### **Rulemaking File**

*Public inspection of file.* The statutes governing the rulemaking file imply that the file is not available to the public until the rulemaking proceeding, and the record of that proceeding, are complete.<sup>24</sup> It is appropriate that the public be able to view the contents of the rulemaking file from the time a regulation is proposed. A major purpose of the rulemaking statute is to promote meaningful public participation in agency rulemaking — for this purpose it is helpful to have the rulemaking file available throughout the rulemaking process. The proposed law makes clear that the rulemaking file is available for public inspection at all times during the rulemaking proceedings.<sup>25</sup>

*Documents added to file.* Existing law provides for addition of documents to the rulemaking file after the close of the public hearing or comment period,<sup>26</sup> subject to the agency making “adequate provision” for further public comment.<sup>27</sup> The proposed law supplements these provisions with specific

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22. *Id.*

23. See proposed amendment to Section 11346.9(a)(3) *infra*.

24. See Section 11347.3.

25. See proposed amendment to Section 11347.3(a) *infra*.

26. Section 11346.9(a)(1).

27. Section 11346.8(d).

procedural rules,<sup>28</sup> based on existing practice.<sup>29</sup> The proposed law also authorizes the addition of material to the rulemaking file during administrative review of a proposed regulation, so long as doing so does not violate other limitations on the addition of material to the file.<sup>30</sup> This allows an agency to correct inadvertent omissions to the rulemaking file, without requiring disapproval of the rule by the Office of Administrative Law and resubmission of the corrected file.

*Final statement of reasons.* Despite the general statutory limitations on adding documents to the rulemaking file after the close of public comment, the law requires an agency to add a final statement of reasons and updated informative digest.<sup>31</sup> The proposed law resolves this inconsistency by making clear that the addition of these materials is an exception to the limitation on adding material to the rulemaking file after public comment.<sup>32</sup>

### **Application of Requirements to Repeals**

Some APA provisions appear to treat the repeal of regulations differently than the adoption or amendment of regulations.<sup>33</sup> Such a distinction is undesirable. While it is true that a repeal cannot be used to create new legal requirements, a repeal may nonetheless have a substantive effect. For example, a repeal might be used to broaden the scope of an existing requirement, by eliminating an exemption. Or a

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28. See proposed Section 11347.1 *infra*.

29. See 1 Cal. Code Reg. § 45.

30. See proposed Section 11349.2 *infra*.

31. Compare Section 11346.8(d) with Section 11347.3(a)(2).

32. See proposed amendment to Section 11346.8(d) *infra*.

33. 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 for limiting this requirement to adoption and amendment.

repeal might eliminate a restriction on one group that is intended to protect another group. The rulemaking procedures should apply to these changes just as they would to the addition or amendment of a regulation. The proposed law revises a number of rulemaking requirements so that they apply to a proposed repeal as well as a proposed adoption or amendment.<sup>34</sup>

### Emergency Rulemaking

The APA provides a procedure for the expedited adoption of temporary “emergency regulations” where such regulations are immediately required to preserve the public peace, health and safety, or general welfare.<sup>35</sup> Emergency regulations are valid for 120 days. This provides time for the agency to adopt a permanent regulation to replace the emergency regulation. The 120-day limit was added in 1957, when rulemaking procedures were less complex than they are today.<sup>36</sup> Under existing law, 120 days may be insufficient time to adopt a permanent regulation. The proposed law increases the effective period of an emergency regulation to 180 days.<sup>37</sup>

The proposed law also makes minor technical changes in the emergency regulation provisions.<sup>38</sup>

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34. See proposed amendments to Sections 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) *infra*.

35. Section 11346.1(b).

36. 1957 Cal. Stat. ch. 1919, § 1.

37. See proposed amendment to Section 11346.1(e) *infra*.

38. See proposed amendments to Sections 11346.1(e) (underinclusive references corrected), (h) (provision clarified without substantive change), 11349.6(a) (underinclusive reference corrected) *infra*.

## EXCEPTIONS TO RULEMAKING REQUIREMENTS

The APA rulemaking requirements are subject to a number of exceptions.<sup>39</sup> The proposed law would create two new exceptions for material that should not be subject to rulemaking procedures:

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

Under existing law, there is no exception to the rulemaking requirements for agency audit criteria, settlement guidelines, or similar rules that properly should not be disclosed to the public. This means that an agency must provide public notice of the substance of such a rule before it can be used by the agency. The proposed law would create an exception for such a rule, where its disclosure would enable a law violator to avoid detection, facilitate disregard of the law, or give a clearly improper advantage to a person in a position adverse to the state.<sup>40</sup> This is consistent with case law holding that disclosure of an agency audit protocol is contrary to the public interest and not required under the Public Records Act where the disclosure would facilitate evasion of the law.<sup>41</sup> It is also consistent with a provision exempting “examination data used to administer a licensing examination, examination for employment, or academic examination” from disclosure under the Public Records Act.<sup>42</sup> If such matters are exempt from disclosure under the Public Records Act they should

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39. To improve their accessibility, the proposed law collects a number of these exceptions in a single section. See proposed Section 11340.9 *infra*.

40. See proposed Section 11340.9(e) *infra*. This exception is drawn from 1981 Model State APA § 3-116(2).

41. “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).

42. See Section 6254(g).



also be exempt from disclosure under the rulemaking procedure.

### **Agency Rule That Is Only Tenable Interpretation of Provision of Law**

An agency should not be required to adopt a regulation in order to state a rule that reflects the only legally tenable interpretation of a provision of law. This principle has been acknowledged by the courts<sup>43</sup> and reflects the current practice of the Office of Administrative Law.<sup>44</sup> The proposed law adds an exception to the rulemaking requirements for an agency rule that is the only legally tenable interpretation of a provision of law.<sup>45</sup>

## NECESSITY STANDARD FOR REVIEW OF REGULATIONS

Proposed regulations must be reviewed and approved by the Office of Administrative Law before they become effective.<sup>46</sup> This review ensures that the regulation satisfies specified standards<sup>47</sup> and is adopted in compliance with procedural

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43. See, e.g., *Engelmann v. State Bd. of Educ.*, 2 Cal. App. 4th 47, 62, 3 Cal. Rptr. 2d 264, 274-75 (1991) (statement of policy or procedure that simply reiterates statutory law, without departing from or embellishing that law, need not be adopted as regulation). *Cf. Grier v. Kizer*, 219 Cal. App. 3d 422, 438-39, 268 Cal. Rptr. 244, 255 (1990) (agency policy was not “only legally tenable interpretation” of law and should have been adopted as a regulation).

44. See, e.g., 1988 OAL Determination No. 10, Cal. Regulatory Notice Reg. 88, No. 28-Z, July 8, 1988, p. 2313 (agency rule reflecting only legally tenable interpretation of statute was not a regulation). *Cf. 1989 OAL Determination No. 15*, Cal. Regulatory Notice Reg. 89, No. 44-Z, Nov. 3 1989, p. 3122 (law interpreted by agency regulation was subject to more than one legally tenable interpretation).

45. See proposed Section 11340.9(f) *infra*.

46. Sections 11349-11349.6.

47. The standards for review of a proposed regulation are: necessity, authority, clarity, consistency, reference, and nonduplication. Section 11349.1(a).

requirements. The proposed law would make two changes in the “necessity” standard.<sup>48</sup>

### **Clarification of Meaning**

In order to satisfy the necessity standard, substantial evidence in the rulemaking file must demonstrate the “need for” the regulation. It is circular to define “necessity” in terms of the “need for” a regulation. The proposed law would clarify the meaning of the standard by placing it in the context of the purpose of the regulation — i.e., the record must demonstrate the need for a proposed regulation “to effectuate the purpose of the statute, court decision, or other provision of law that the regulation implements, interprets, or makes specific.”<sup>49</sup> This change is consistent with other provisions of the APA that relate to the necessity of a regulation.<sup>50</sup>

### **Evidence Supporting Determination**

Under existing law, if an agency relies on policies, conclusions, speculation, or conjecture to explain the necessity for a regulation, the rulemaking file must also include supporting facts, studies, expert opinion, or other information.<sup>51</sup> This can be a problem where, as a practical matter, factual support for the agency’s explanation of necessity cannot be provided. For example, where an agency anticipates a problem that has not yet occurred, it may be difficult or impossible to find data relating to that problem. In such a case, the agency must act

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48. Section 11349(a).

49. See proposed amendment to Section 11349(a) *infra*.

50. See Sections 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).

51. 1 Cal. Code Regs. § 10(b)(2).

on its informed assessment of the situation. The proposed law would address this problem by authorizing an agency to provide its rationale for the necessity of a regulation in lieu of facts or expert opinion showing the need for the regulation. To do so, the agency must explain why, as a practical matter, factual evidence or expert opinion cannot be provided to support its explanation.<sup>52</sup> The agency's explanation would be subject to review by the Office of Administrative Law.<sup>53</sup>

### PERIOD FOR REVIEW OF EMERGENCY REGULATION

The period for review of a proposal to make an emergency regulation permanent is 30 "days."<sup>54</sup> This is inconsistent with the 30 "working day" period for review of a regulation generally.<sup>55</sup> There is no apparent reason for this inconsistency — in each case the Office of Administrative Law is reviewing a proposed permanent regulation that has been adopted under the full rulemaking procedure. The proposed law would eliminate the inconsistency by increasing the period for review of an emergency regulation to 30 working days.<sup>56</sup>

### JUDICIAL REVIEW OF REGULATIONS

In a proceeding for a judicial declaration as to the validity of a regulation, the record of review is limited to the contents of the rulemaking file.<sup>57</sup> This limitation is too restrictive. It precludes review of essential materials that are not included

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52. See proposed Section 11349(a) *infra*.

53. The Office of Administrative Law may disapprove a proposed regulation for failure to comply with rulemaking requirements. See Section 11349.3.

54. Section 11349.6(d).

55. Section 11349.3.

56. See proposed amendment to Section 11349.6(d) *infra*.

57. Section 11350(b)(2).

in the rulemaking file, such as the statement of emergency required when adopting an emergency regulation.<sup>58</sup> It can also preclude review of evidence showing that the agency did not comply with the rulemaking procedures in adopting the regulation. For example, proof that an agency failed to include written public comments in a rulemaking file requires review of the excluded comments. The proposed law addresses this problem by expanding the scope of the record on review to include materials necessary for that review.<sup>59</sup>

The declaratory review procedure may be used to challenge the validity of a regulation used by the agency that should have been adopted under the APA, but was not.<sup>60</sup> In such a case, a party should be able to introduce evidence to prove whether the regulation was used by the agency and whether it should have been adopted. The proposed law would allow the court to consider any evidence for that purpose.<sup>61</sup>

## MISCELLANEOUS TECHNICAL IMPROVEMENTS

The proposed law would make the following technical improvements in existing law:

- (1) Some provisions that are awkwardly drafted or contain technical errors are revised.<sup>62</sup>

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58. See Section 11346.1(a) (emergency regulations are not subject to Section 11347.3).

59. See proposed Section 11350(d) *infra*.

60. Section 11350 provides for review of “any regulation.” The definition of “regulation” is not limited to regulations that have been formally adopted as required. See, e.g., Section 11340.5(a) (prohibiting use of regulations that have not been formally adopted).

61. See proposed Section 11350(d)(4) *infra*.

62. See proposed amendment to Sections 11343.4(a) (erroneous reference), 11344.1(a)(4) (ambiguity), 11347.3(b)(9) (awkward), 11349(b)-(f) (awkward), 11350(a) (ambiguity) *infra*.

- (2) The definition of “agency” is revised to provide that “agency” has the same meaning as “state agency.” This is implied but not expressly stated in existing law.<sup>63</sup>
- (3) The name of the “California Regulatory Code Supplement” is changed to the “California Code of Regulations Supplement.”<sup>64</sup> This is consistent with the name of the “California Code of Regulations,” which it supplements.
- (4) The long definition section<sup>65</sup> is replaced with an article, divided into individual sections, setting out the definitions in alphabetical order.<sup>66</sup>
- (5) Some definitions that are actually substantive provisions are recast as such.<sup>67</sup>
- (6) Minor changes are made to codify existing beneficial practices.<sup>68</sup>
- (7) A redundant section is repealed.<sup>69</sup>
- (8) Duplicative requirements relating to the contents of the initial statement of reasons are consolidated.<sup>70</sup>

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63. See proposed Section 11342.520 *infra*.

64. See proposed amendment to Section 11344 *infra*.

65. Section 11342.

66. See proposed Sections 11342.510-11342.610 *infra*.

67. See proposed amendments to Sections 11342(a) (agencies not subject to chapter), (g) (exceptions for forms, internal management decisions, and legal rulings of counsel of Franchise Tax Board and State Board of Equalization), 11346.3(b)(2) (agencies not subject to economic impact analysis requirement) *infra*.

68. See proposed amendments to Sections 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) *infra*.

69. Section 11346.54. *Cf.* Sections 11346.3(b) (economic impact assessment), 11346.5(a)(10) (publication of economic impact assessment in notice of proposed action).

70. See, e.g., Section 11346.2(b)(1) & (2).

- (9) Technical defects relating to the adoption of regulations under Sections 3373 and 8054 of the Financial Code are corrected.<sup>71</sup>
- (10) Technical defects in provisions relating to the adoption of building standards are corrected.<sup>72</sup>

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

72. See proposed Section 11342.530 (“building standard” defined to simplify drafting) *infra*. See proposed amendment to Section 11356 (a) (redrafted for clarity) *infra*.

## PROPOSED LEGISLATION

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

### Contents

Proposed Legislation in Government Code . . . . . 483

    CHAPTER 3.5. ADMINISTRATIVE REGULATIONS AND  
        RULEMAKING . . . . . 483

    Article 1. General . . . . . 483

        § 11340 (unchanged). Legislative finding and declaration . . . . . 483

        § 11340.1 (unchanged). Legislative intent . . . . . 484

        § 11340.2 (unchanged). Office of Administrative Law . . . . . 484

        § 11340.3 (unchanged). Personnel . . . . . 485

        § 11340.4 (unchanged). Authority of Office of Administrative  
            Law . . . . . 485

        § 11340.5 (amended). Use of regulations . . . . . 485

        § 11340.6 (unchanged). Petition for adoption of regulation . . . . . 487

        § 11340.7 (unchanged). Response to petition . . . . . 488

        § 11340.8 (added). Electronic communication . . . . . 489

        § 11340.9 (added). Exceptions . . . . . 490

        § 11342 (repealed). Definitions . . . . . 492

        § 11342.1 (unchanged). Scope of authority . . . . . 495

        § 11342.2 (unchanged). Validity of regulations . . . . . 495

        § 11342.4 (unchanged). Regulations to carry out provisions of  
            chapter . . . . . 496

    Article 2. Definitions . . . . . 496

        § 11342.510 (added). Application of definitions . . . . . 496

        § 11342.520 (added). Agency . . . . . 496

        § 11342.530 (added). Building standard . . . . . 496

        § 11342.540 (added). Director . . . . . 497

        § 11342.550 (added). Office . . . . . 497

        § 11342.560 (added). Order of repeal . . . . . 497

        § 11342.570 (added). Performance standard . . . . . 497

        § 11342.580 (added). Plain English . . . . . 497

        § 11342.590 (added). Prescriptive standard . . . . . 498

        § 11342.600 (added). Regulation . . . . . 498

§ 11342.610 (added). Small business . . . . . 498

Article 3. Filing and Publication . . . . . 500

§ 11343 (amended). Transmittal of certified copies of regulations . . . . . 500

§ 11343.1 (unchanged). Style . . . . . 501

§ 11343.2 (unchanged). Filing procedures . . . . . 501

§ 11343.4 (amended). Effective date of regulation . . . . . 502

§ 11343.5 (amended). Filing of regulatory code or supplement . . . . . 503

§ 11343.6 (unchanged). Effect of filing certified copy . . . . . 503

§ 11343.8 (unchanged). Filing and publication other than required by article . . . . . 504

Article 4. The California Code of Regulations, the California Code of Regulations Supplement, and the California Regulatory Notice Register . . . . . 504

§ 11344 (amended). Code of Regulations . . . . . 504

§ 11344.1 (amended). California Regulatory Notice Register . . . . . 505

§ 11344.2 (amended). Supplying sets to county clerks or delegated persons . . . . . 506

§ 11344.3 (unchanged). Publication in Notice Register . . . . . 507

§ 11344.4 (amended). Sale of publications . . . . . 507

§ 11344.6 (amended). Presumption from publication in Code or Supplement . . . . . 507

§ 11344.7 (amended). Purchase of publications . . . . . 508

§ 11344.9 (amended). Obsolete references . . . . . 509

Article 5. Public Participation: Procedure for Adoption of Regulations . . . . . 509

§ 11346 (amended). Purpose and application . . . . . 509

§ 11346.1 (amended). Emergency regulations . . . . . 510

§ 11346.2 (amended). Notification of Office of Administrative Law . . . . . 513

§ 11346.3 (amended). Potential economic effect . . . . . 516

§ 11346.4 (unchanged). Notice of proposed action . . . . . 518

§ 11346.5 (amended). Notice contents . . . . . 519

§ 11346.54 (repealed). Assessment of economic effect . . . . . 525

§ 11346.8 (amended). Public hearing . . . . . 525

§ 11346.9 (amended). Final statement of reasons and updated informative digest . . . . . 527

§ 11347.1 (added). Documents added to rulemaking file . . . . . 530

§ 11347.3 (amended). File of rulemaking proceeding . . . . . 532

Article 6. Review of Proposed Regulations . . . . . 535

§ 11349 (amended). Standards . . . . . 534

§ 11349.1 (amended). Review of regulations . . . . . 536

§ 11349.2 (added). Adding to rulemaking file during review . . . . . 539

§ 11349.3 (unchanged). Approval or disapproval . . . . . 540



§ 11349.4 (unchanged). Returned regulations . . . . . 540

§ 11349.5 (unchanged). Review by Governor of decision by  
Office of Administrative Law . . . . . 541

§ 11349.6 (amended). Emergency regulations . . . . . 543

Article 7. Review of Existing Regulations . . . . . 544

§ 11349.7 (unchanged). Review of regulations on request of  
Legislature . . . . . 544

§ 11349.8 (unchanged). Repeal for lack of statutory authority . . . . . 546

§ 11349.9 (unchanged). Review of repeal pursuant to Section  
11349.8 . . . . . 549

Article 8. Judicial Review . . . . . 550

§ 11350 (amended). Judicial review of validity of regulation . . . . . 550

§ 11350.3 (amended). Review of regulation disapproved by  
Office of Administrative Law . . . . . 552

Article 9. Special Procedures . . . . . 553

§ 11351 (unchanged). Public Utilities Commission and Worker’s  
Compensation Appeals Board . . . . . 553

§ 11352 (unchanged). Water quality certification and waste  
discharge requirements . . . . . 553

§ 11353 (amended). State water quality control policies, plans,  
and guidelines . . . . . 554

§ 11354 (unchanged). Application of Sections 11352 and 11353 . . . 556

§ 11354.1 (unchanged). San Francisco Bay Conservation and  
Development Commission . . . . . 557

§ 11356 (amended). Building standards or regulations . . . . . 559

§ 11357 (unchanged). Department of Finance instructions . . . . . 560

§ 11359 (unchanged). Fire and panic safety regulations . . . . . 561

  

Conforming Revisions . . . . . 563

Fin. Code § 3373 (amended). Changes to federal regulations . . . . . 563

Gov’t Code § 8546 (technical amendment). Legislative intent  
regarding Bureau of State Audits . . . . . 564

Gov’t Code § 27491.41 (technical amendment). Sudden infant  
death syndrome . . . . . 566

Health & Safety Code § 57004 (technical amendment). External  
scientific peer review of proposed rules . . . . . 568

Penal Code § 5058 (technical amendment). Rulemaking . . . . . 571

Pub. Res. Code § 25620.2 (technical amendment).  
Administration of program . . . . . 575

Welf. & Inst. Code § 11462.4 (technical amendment).  
Community care facility deemed small business . . . . . 577

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## PROPOSED LEGISLATION

### CHAPTER 3.5. ADMINISTRATIVE REGULATIONS AND RULEMAKING

#### Article 1. General

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

11340. The Legislature finds and declares as follows:

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

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

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

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

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

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

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

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

11340.1. (a) The Legislature therefore declares that it is in the public interest to establish an Office of Administrative Law which shall be charged with the orderly review of adopted regulations. It is the intent of the Legislature that the purpose of such review shall be to reduce the number of administrative regulations and to improve the quality of those regulations which are adopted. It is the intent of the Legislature that agencies shall actively seek to reduce the unnecessary regulatory burden on private individuals and entities by substituting performance standards for prescriptive standards wherever performance standards can be reasonably expected to be as effective and less burdensome, and that this substitution shall be considered during the course of the agency rulemaking process. It is the intent of the Legislature that neither the Office of Administrative Law nor the court should substitute its judgment for that of the rulemaking agency as expressed in the substantive content of adopted regulations. It is the intent of the Legislature that while the Office of Administrative Law will be part of the executive branch of state government, that the office work closely with, and upon request report directly to, the Legislature in order to accomplish regulatory reform in California.

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

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

11340.2. (a) The Office of Administrative Law is hereby established in state government. The office shall be under the

direction and control of an executive officer who shall be known as the director. There shall also be a deputy director. The director's term and the deputy director's term of office shall be coterminous with that of the appointing power, except that they shall be subject to reappointment.

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

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

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

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

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

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

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

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

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

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

SEC. \_\_\_\_\_. Section 11340.5 of the Government Code is amended to read:

11340.5. (a) No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in ~~subdivision (g) of Section 11342~~ *Section 11342.600*, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to this chapter.

(b) If the office is notified of, or on its own, learns of the issuance, enforcement of, or use of, an agency guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule that has not been adopted as a regulation and filed with the Secretary of State pursuant to this chapter, the office may issue a determination as to whether the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, is a regulation as defined in ~~subdivision (g) of Section 11342~~ *Section 11342.600*.

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

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

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

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

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

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

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

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

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

(3) At issue in the proceeding is the question of whether the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule that is the legal basis for the adjudicatory action is a regulation as defined in ~~subdivision (g) of Section 11342~~ *Section 11342.600*.

**Comment.** Section 11340.5 is amended to correct references to the definition of "regulation" in former Section 11342(g), which is continued in Section 11342.600. Amendment of this section is not intended to ratify or abrogate the opinion in *Tidewater Marine Western, Inc. v. Bradshaw*, 14 Cal. 4th 557, 927 P.2d 296, 59 Cal. Rptr. 2d 186 (1996).

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

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

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

(b) The reason for the request.

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

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

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

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

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

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



interested persons to obtain a copy of the petition from the agency.

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

SEC. \_\_\_\_\_. Section 11340.8 is added to the Government Code, to read:

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

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

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

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

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

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

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

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

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

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

SEC. \_\_\_\_\_. Section 11340.9 is added to the Government Code, to read:

11340.9. This chapter does not apply to any of the following:

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

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

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

(d) A regulation that relates only to the internal management of the state agency.

(e) A regulation that establishes criteria or guidelines to be used by the staff of an agency in performing an audit, investigation, examination, or inspection, settling a commercial dispute, negotiating a commercial arrangement, or in the defense, prosecution, or settlement of a case, if disclosure of the criteria or guidelines would do any of the following:

- (1) Enable a law violator to avoid detection.
  - (2) Facilitate disregard of requirements imposed by law.
  - (3) Give a clearly improper advantage to a person who is in an adverse position to the state.
- (f) A regulation that embodies the only legally tenable interpretation of a provision of law.
- (g) A regulation that establishes or fixes rates, prices, or tariffs.
- (h) A regulation that relates to the use of public works, including streets and highways, when the effect of the regulation is indicated to the public by means of signs or signals or when the regulation determines uniform standards and specifications for official traffic control devices pursuant to Section 21400 of the Vehicle Code.
- (i) A regulation that is directed to a specifically named person or to a group of persons and does not apply generally throughout the state.

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

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

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

Subdivision (e) establishes a new exception for agency rules that should not be disclosed to the public. It is drawn from 1981 Model State APA § 3-116(2). Note that “examination” includes both an inspection and a test administered to determine a person’s knowledge or ability. See, e.g., Corp. Code § 25217 (passage of examination administered by Department of Corporations may be required for licensing of securities agent); Fin. Code § 17405 (Department of Corporations may examine business, accounts, and records of escrow agent). Subdivision (e) is intended to create an exception for data that relates to an examination only where disclosure of that data would give a clearly improper advantage to a person taking the examination.

Subdivision (f) establishes a new exception for an agency rule embodying the only legally tenable interpretation of a provision of law. This principle has been recognized by the courts. See, e.g., *Engelmann v. State Bd. of Educ.*, 2 Cal. App. 4th 47, 62, 3 Cal. Rptr. 2d 264, 274-75 (1991) (statement of policy or procedure that simply reiterates statutory

law, without departing from or embellishing it, need not be adopted as regulation). *Cf. Grier v. Kizer*, 219 Cal. App. 3d 422, 438-39, 268 Cal. Rptr. 244, 255 (1990) (agency policy was not “only legally tenable interpretation” of law and should have been adopted as regulation). The rule is also consistent with the current practice of the Office of Administrative Law. *See, e.g.*, 1988 OAL Determination No. 10, Cal. Regulatory Notice Reg. 88, No. 28-Z, July 8, 1988, p. 2313 (agency rule reflecting only legally tenable interpretation of statute was not regulation). *Cf.* 1989 OAL Determination No. 15, Cal. Regulatory Notice Reg. 89, No. 44-Z, Nov. 3 1989, p. 3122 (law interpreted by agency regulation was subject to more than one legally tenable interpretation). The addition of this exception does not expand the definition of “regulation.” See Section 11342.600 (“regulation” defined). For a similar exception, see Section 18212(a).

Subdivisions (g)-(i) continue without substantive change former Section 11343(a)(1)-(3) and part of the former first sentence of Section 11346.1(a) (“This article does not apply to any regulation not required to be filed with the Secretary of State under this chapter....”). Enactment of subdivision (i) is not intended to ratify or abrogate the opinion in *Tidewater Marine Western, Inc. v. Bradshaw*, 14 Cal. 4th 557, 927 P.2d 296, 59 Cal. Rptr. 2d 186 (1996).

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

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

## **Article 2. Rules and Regulations**

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

SEC. \_\_\_\_\_. Section 11342 of the Government Code is repealed.

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

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

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

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

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

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

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

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

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

~~(A) Independently owned and operated.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Comment.** Subdivision (a) of former Section 11342 is continued in Section 11340.9(a) (requirements of chapter do not apply to agency in the judicial or legislative branch of state government) without substantive change. See also Sections 11000 (“state agency” defined), 11342.520 (“agency” defined).

Subdivision (b) is continued in Section 11342.550 without change.

Subdivision (c) is continued in Section 11342.560 without change.

Subdivision (d) is continued in Section 11342.570 without change.

Subdivision (e) is continued in Section 11342.580. The definition of “plain English” has been changed so that it refers to the “clarity” standard provided in Section 11349(c) (a regulation must be written or displayed so that its meaning is easily understood by persons directly affected by it).

Subdivision (f) is continued in Section 11342.590 without change.

Subdivision (g) is continued without substantive change in Sections 11340.9(b) (legal ruling of counsel of the Franchise Tax Board or State Board of Equalization exempt from requirements of chapter), 11340.9(c) (state form and instructions for use of form exempt from requirements of chapter), 11340.9(d) (internal management rules exempt from requirements of chapter), 11342.600 (“regulation” defined).

Subdivision (h) is continued in Section 11342.610 without substantive change.

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

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

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

11342.2. Whenever by the express or implied terms of any statute a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the

provisions of the statute, no regulation adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute.

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

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

**Gov't Code §§ 11342.510-11342.610 (added). Definitions**

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

Article 2. Definitions

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

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

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

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

11342.520. "Agency" means state agency.

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

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

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

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



**Gov't Code § 11342.540 (added). Director**

11342.540. "Director" means the director of the office.

**Comment.** Section 11342.540 is new. It is added for drafting convenience.

**Gov't Code § 11342.550 (added). Office**

11342.550. "Office" means the Office of Administrative Law.

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

**Gov't Code § 11342.560 (added). Order of repeal**

11342.560. "Order of repeal" means any resolution, order or other official act of a state agency that expressly repeals a regulation in whole or in part.

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

**Gov't Code § 11342.570 (added). Performance standard**

11342.570. "Performance standard" means a regulation that describes an objective with the criteria stated for achieving the objective.

**Comment.** Section 11342.570 continues former Section 11342(d) without change.

**Gov't Code § 11342.580 (added). Plain English**

11342.580. "Plain English" means language that satisfies the standard of clarity provided in Section 11349.

**Comment.** Section 11342.580 is drawn from former Section 11342(e). This section differs from former Section 11342(e) in that it refers to the "clarity" standard provided in Section 11349(c) (regulations must be written or displayed so that their meaning will be easily understood by persons directly affected by them). Plain English requirements may be found in Sections 11346.2 and 11346.5.

**Gov't Code § 11342.590 (added). Prescriptive standard**

11342.590. "Prescriptive standard" means a regulation that specifies the sole means of compliance with a performance standard by specific actions, measurements, or other quantifiable means.

**Comment.** Section 11342.590 continues former Section 11342(f) without change.

**Gov't Code § 11342.600 (added). Regulation**

11342.600. "Regulation" means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

**Comment.** Section 11342.600 continues part of former Section 11342(g) without substantive change. The parts of former Section 11342(g) that are not continued in this section are continued without substantive change in Section 11340.9(b)-(d).

**Gov't Code § 11342.610 (added). Small business**

11342.610. (a) "Small business" means a business activity in agriculture, general construction, special trade construction, retail trade, wholesale trade, services, transportation and warehousing, manufacturing, generation and transmission of electric power, or a health care facility, unless excluded in subdivision (b), that is both of the following:

- (1) Independently owned and operated.
- (2) Not dominant in its field of operation.

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

- (1) A financial institution including a bank, a trust, a savings and loan association, a thrift institution, a consumer finance company, a commercial finance company, an industrial finance company, a credit union, a mortgage and

investment banker, a securities broker-dealer, or an investment adviser.

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

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

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

(5) An entity organized as a nonprofit institution.

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

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

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

(9) A manufacturing enterprise exceeding 250 employees.

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

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

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

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

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

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

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

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

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

**Comment.** Section 11342.610 continues former Section 11342(h) without substantive change.

### Article 3. Filing and Publication

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

SEC. \_\_\_\_\_. Section 11343 of the Government Code is amended to read:

11343. Every state agency shall:

(a) Transmit to the office for filing with the Secretary of State a certified copy of every regulation adopted or amended by it except one ~~which: *that is a building standard.*~~

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

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

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

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

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

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

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

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

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

**Comment.** Section 11343 is amended to make technical improvements. Former subdivision (a)(1)-(3) is continued without substantive change in Section 11340.9(g)-(i).

Subdivision (e) is amended to reflect the change in the name of the California Building Standards Commission. See also Section 11342.530 (“building standard” defined).

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

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

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

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

11343.2. The Secretary of State shall endorse on the certified copy of each regulation or order of repeal filed with

or delivered to him or her, the time and date of filing and shall maintain a permanent file of the certified copies of regulations and orders of repeal for public inspection.

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

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

SEC. \_\_\_\_\_. Section 11343.4 of the Government Code is amended to read:

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

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

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

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

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

**Comment.** Subdivision (a) of Section 11343.4 is amended to eliminate an ambiguity. Former subdivision (b) is deleted as redundant. See Fin. Code §§ 3373(b)(3) (effective date of regulation adopted pursuant to that section), 8054(c) (regulation adopted pursuant to that section subject to Gov't Code § 11346.1); Gov't Code § 11346.1(d) (effective date of regulation adopted pursuant to that section).

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

SEC. \_\_\_\_\_. Section 11343.5 of the Government Code is amended to read:

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

**Comment.** Section 11343.5 is amended to conform to the change in the name of the former California Regulatory Code Supplement. See Section 11344.

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

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

- (a) It was duly adopted.
- (b) It was duly filed and made available for public inspection at the day and hour endorsed on it.
- (c) All requirements of this chapter and the regulations of the office relative to such regulation have been complied with.
- (d) The text of the certified copy of a regulation or order of repeal is the text of the regulation or order of repeal as adopted.

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

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

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

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

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

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

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

SEC. \_\_\_\_\_. Section 11344 of the Government Code is amended to read:

11344. The office shall do all of the following:

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

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

(c) Provide for the publication dates and manner and form in which regulations shall be printed and distributed and



ensure that regulations are available in printed form at the earliest practicable date after filing with the Secretary of State.

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

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

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

SEC. \_\_\_\_\_. Section 11344.1 of the Government Code is amended to read:

11344.1. The office shall do all of the following:

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

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

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

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

(4) ~~The Governor's action in reviewing the disapprovals of the office, the decisions to repeal, the agency's request for review, the office's response thereto, and the decisions of the Governor's office, as required by Section 11349.7. *Material*~~

*that is required to be published under Sections 11349.5, 11349.7, and 11349.9.*

(5) Determinations issued pursuant to Section 11340.5.

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

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

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

SEC. \_\_\_\_\_. Section 11344.2 of the Government Code is amended to read:

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

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

(b) The California Code of Regulations and ~~California Regulatory Code Supplement~~ *California Code of Regulations Supplement* are not otherwise reasonably available to the public in the community where the county clerk or the delegatee of the county clerk pursuant to Section 26803.5 would normally maintain the code and supplements by

distribution to libraries pursuant to Article 6 (commencing with Section 14900) of Chapter 7 of Part 5.5.

**Comment.** Section 11344.2 is amended to reflect existing practice and to conform to the change in the name of the former California Regulatory Code Supplement. See Section 11344.

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

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

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

SEC. \_\_\_\_\_. Section 11344.4 of the Government Code is amended to read:

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

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

**Comment.** Section 11344.4 is amended to conform to the change in the name of the former California Regulatory Code Supplement. See Section 11344.

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

SEC. \_\_\_\_\_. Section 11344.6 of the Government Code is amended to read:

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

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

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

**Comment.** Section 11344.6 is amended to conform to the change in the name of the former California Regulatory Code Supplement. See Section 11344.

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

SEC. \_\_\_\_\_. Section 11344.7 of the Government Code is amended to read:

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

**Comment.** Section 11344.7 is amended to conform to the change in the name of the former California Regulatory Code Supplement. See Section 11344.

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

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

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

(c) Whenever the term “California Administrative Code Supplement” or “*California Regulatory Code Supplement*” appears in any law, official legal paper, or legal publication, it means the “~~California Regulatory Code Supplement~~ *California Code of Regulations Supplement*.”

**Comment.** Section 11344.9 is amended to conform to the change in the name of the former California Regulatory Code Supplement. See Section 11344.

Article 5. Public Participation: Procedure  
for Adoption of Regulations

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

SEC. \_\_\_\_\_. Section 11346 of the Government Code is amended to read:

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

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

**Comment.** Subdivision (b) of Section 11346 is added to clarify the legality of an existing agency practice — consultation with interested persons in developing a proposed regulation. For example, an agency that is considering the adoption of a regulation may hold a workshop in which interested persons can share their views on the proposal. Informal communication of this type provides useful information to the agency and may reduce opposition to the proposed regulation from persons who participated in its development.

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

SEC. \_\_\_\_\_. Section 11346.1 of the Government Code is amended to read:

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

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

Any finding of an emergency shall include a written statement which contains the information required by paragraphs (2) to (6), inclusive, of subdivision (a) of Section 11346.5 and a description of the specific facts showing the need for immediate action. The enactment of an urgency

statute shall not, in and of itself, constitute a need for immediate action.

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

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

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

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

*complied with either before the emergency regulation was adopted or within the 180-day period.*

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

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

~~(h) A regulation originally adopted as an emergency regulation, or an emergency regulation substantially equivalent thereto that is readopted as an emergency regulation, shall not be filed with the Secretary of State as an emergency regulation except with the express prior approval of the director of the office. Except with the express prior approval of the director, an agency shall not adopt an emergency regulation that is substantially equivalent to an emergency regulation previously adopted by that agency. If the agency proposes the adoption of an emergency regulation that is substantially equivalent to a previously adopted emergency regulation and the director does not expressly approve adoption of the emergency regulation, the office shall not file the emergency regulation with the Secretary of State.~~

**Comment.** Subdivision (a) of Section 11346.1 is amended to make three technical changes:

(1) The provision establishing an exception to the requirements of this article for “any regulation not required to be filed with the Secretary of State under this chapter” is deleted. The substance of this exception is continued in Section 11340.9(g)-(i). This change



also resolves an inconsistency between Section 11356(b), which expressly requires building standards to be adopted under this article, and the deleted language, which exempted building standards from the requirements of this article.

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

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

Subdivision (c) is amended to use the defined term “building standard,” to correct a grammatical error, and to reflect the change in the name of the California Building Standards Commission. See Section 11342.530 (“building standard” defined).

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

Subdivision (h) is amended to improve its clarity, without affecting its substance.

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

SEC. \_\_\_\_\_. Section 11346.2 of the Government Code is amended to read:

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

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

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

(2) The agency shall include a notation following the express terms of each regulation listing the specific statutes or

other provisions of law authorizing the adoption of the regulation and listing the specific statutes or other provisions of law being implemented, interpreted, or made specific by the regulation.

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

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

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

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

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

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

(B) A description of any alternatives the agency has identified that would lessen any adverse impact on small

business. It is not the intent of this paragraph to require the agency to artificially construct alternatives or to justify why it has not identified alternatives.

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

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

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

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

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

that are different from the corresponding provisions of the federal regulation.

**Comment.** Subdivision (a)(1) of Section 11346.2 is a specific application of Section 6215(a) (state agency “shall write each document which it produces in plain, straightforward language, avoiding technical terms as much as possible, and using a coherent and easily readable style”). The requirement that a regulation be written in plain English has been expanded to include all regulations and not just those that affect small business. Plain English means language that satisfies the clarity standard expressed in Section 11349. See Section 11342.580 (“plain English” defined). Note that the former provision requiring the preparation of a plain English summary of a proposed regulation affecting small businesses, where the regulation cannot be drafted in plain English, has been broadened to apply to all regulations and continued in Section 11346.5(a)(3)(B). See Sections 11342.580 (“plain English” defined), 11349(c) (clarity standard).

Former subdivision (b)(1) (description of problem addressed) is deleted as unnecessary; the same information is required by former subdivision (b)(2) (statement of purpose for proposed action).

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

Former subdivision (b)(5) is revised to eliminate the implication that formal findings are required before the agency has received comment on a proposed action.

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

SEC. \_\_\_\_\_. Section 11346.3 of the Government Code is amended to read:

11346.3. (a) State agencies proposing to adopt, ~~or~~ amend, *or repeal* any administrative regulation shall assess the potential for adverse economic impact on California business enterprises and individuals, avoiding the imposition of unnecessary or unreasonable regulations or reporting, recordkeeping, or compliance requirements. For purposes of this subdivision assessing the potential for adverse economic impact shall require agencies, when ~~adopting new regulations or reviewing, or amending, existing regulations~~ *proposing to adopt, amend, or repeal a regulation*, to adhere to the

following requirements, to the extent that these requirements do not conflict with other state or federal laws:

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

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

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

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

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

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

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

(2) ~~For purposes of this subdivision, "state agency" shall include every state office, officer, department, division,~~

bureau, board, and commission, whether created by the Constitution, statute, or initiative, but shall not include the courts, an agency in the judicial or legislative branch of state government, *This subdivision does not apply to the University of California, the Hastings College of the Law, or the Fair Political Practices Commission.*

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

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

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

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

#### **Gov’t Code § 11346.4 (unchanged). Notice of proposed action**

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

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

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

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

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

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

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

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

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

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

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

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

SEC. \_\_\_\_\_. Section 11346.5 of the Government Code is amended to read:

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

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

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

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

~~(A) A concise and clear summary of existing laws and regulations, if any, related directly to the proposed action and of the effect of the proposed action.~~

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

~~(B) If the proposed action affects small business, the informative digest shall also include a plain English~~

~~(C) A policy statement overview explaining the broad objectives of the regulation and, if appropriate, the specific objectives.~~

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

(5) A determination as to whether the regulation imposes a mandate on local agencies or school districts and, if so,



whether the mandate requires state reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4.

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

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

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

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

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

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

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

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

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

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

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

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

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

For purposes of this paragraph, “cost impact” means the reasonable range of costs, or a description of the type and extent of costs, direct or indirect, that a representative private

person or business necessarily incurs in reasonable compliance with the proposed action.

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

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

(12) A statement that the action would have a significant effect on housing costs, if a state agency, in adopting, amending, or repealing any administrative regulation, ~~determines that the action would have an~~ *believes that the action would have that* effect. In addition, the agency officer designated in paragraph ~~(13)~~ (14), shall make available to the public, upon request, the agency's evaluation, if any, of the effect of the proposed regulatory action on housing costs.

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

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

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

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

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

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

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

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

**Comment.** Subdivision (a)(3)(B) of Section 11346.5 is amended to broaden the plain English policy statement requirement to apply to all proposed actions, and not just those affecting small business. The informative digest is also expanded to include a plain English summary of the regulation. See Sections 11342.580 (“plain English” defined), 11349(c) (clarity standard).

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

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

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

SEC. \_\_\_\_\_. Section 11346.54 of the Government Code is repealed.

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

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

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

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

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

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

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

**Comment.** Former Section 11346.54 has been repealed as redundant. See Sections 11346.3(b) (assessment of economic effect), 11346.5(a)(10) (inclusion of assessment in notice of proposed action).

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

SEC. \_\_\_\_\_. Section 11346.8 of the Government Code is amended to read:

11346.8. (a) If a public hearing is held, *both oral and written* statements, arguments, or contentions, ~~either oral or in writing, or both,~~ shall be permitted. *The agency may impose*

*reasonable limitations on oral presentations.* If a public hearing is not scheduled, the state agency shall, consistent with Section 11346.4, afford any interested person or his or her duly authorized representative, the opportunity to present statements, arguments or contentions in writing. In addition, a public hearing shall be held if, no later than 15 days prior to the close of the written comment period, an interested person or his or her duly authorized representative submits in writing to the state agency, a request to hold a public hearing. The state agency shall, to the extent practicable, provide notice of the time, date, and place of the hearing by mailing the notice to every person who has filed a request for notice thereby with the state agency. The state agency shall consider all relevant matter presented to it before adopting, amending, or repealing any regulation.

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

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

received regarding the change must be responded to in the final statement of reasons required by Section 11346.9.

(d) No state agency shall add any material to the record of the rulemaking proceeding after the close of the public hearing or comment period, unless ~~adequate provision is made for public comment on that matter~~ *the agency complies with Section 11347.1. This subdivision does not apply to material prepared pursuant to Section 11346.9.*

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

Subdivision (d) is amended to refer to Section 11347.1, which codifies the existing procedure for providing an additional opportunity for public comment in response to material added to the rulemaking file. See 1 Cal. Code Regs. § 45. Section 11347.1 requires additional public comment on certain material that is added to the rulemaking file after publication of the notice of proposed action. This is a broader requirement than that provided in subdivision (d), which only requires an opportunity for additional comment regarding material that is added to the rulemaking file after the close of the public hearing or comment period. The broader requirement is consistent with existing practice. Subdivision (d) is also amended to exempt material that is required to be added to the rulemaking file after the close of the public hearing or comment period. See Section 11346.9 (final statement of reasons and updated informative digest). However, if the final statement of reasons refers to documents not previously included in the rulemaking file, an opportunity for additional public comment regarding those documents must be provided. See Section 11346.9(a)(1).

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

SEC. \_\_\_\_\_. Section 11346.9 of the Government Code is amended to read:

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

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

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

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

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

(4) A determination with supporting information that no alternative considered by the agency would be more effective in carrying out the purpose for which the regulation is



proposed or would be as effective and less burdensome to affected private persons than the adopted regulation.

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

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

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

*(d) If an agency determines that a requirement of this section can be satisfied by reference to an agency statement made pursuant to Sections 11346.2 to 11346.5, inclusive, the agency may satisfy the requirement by incorporating the relevant statement by reference.*

**Comment.** Subdivision (a)(1) of Section 11346.9 is amended to refer to Section 11347.1, which codifies the existing procedure for providing an additional opportunity for public comment in response to material

added to the rulemaking file. See 1 Cal. Code Regs. § 45. Subdivision (a) requires additional public comment on certain material that is added to the rulemaking file after publication of the notice of proposed action. This is a broader requirement than that provided in Section 11346.8(d), which only requires an opportunity for additional comment regarding material that is added to the rulemaking file after the close of the public hearing or comment period. The broader requirement is consistent with existing practice.

Subdivision (a)(1)-(2) is also amended to make clear that those provisions apply to the repeal of a regulation as well as the adoption or amendment of a regulation.

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

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

Subdivision (d) is added to authorize incorporation of a prior statement by reference. This reflects the fact that no purpose is served by requiring an agency to reiterate a statement that was made earlier in the rulemaking process. For example, where an agency determines pursuant to Section 11346.5(a)(6) that a proposed rule would not impose a cost on a local agency or school district and, at the time of preparing the final statement of reasons, determines that its prior determination is correct and complete, the agency may incorporate the statement made pursuant to Section 11346.5(a)(6) in complying with Section 11346.9(a)(2).

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

SEC. \_\_\_\_\_. Section 11347.1 is added to the Government Code, to read:

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

(b) At least 15 calendar days before the proposed action is submitted to the office for review and filing with the Secretary of State, the agency shall mail to all of the following persons a notice identifying the added document

and stating the place and business hours that the document is available for public inspection:

(1) Persons who testified at the public hearing.

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

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

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

(c) The document shall be available for public inspection at the location described in the notice for at least 15 calendar days before the proposed action is submitted to the office for review and filing with the Secretary of State.

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

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

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

**Comment.** Section 11347.1 is drawn from 1 Cal. Code Regs. § 45. It codifies the existing procedure for providing an additional opportunity for public comment in response to material added to the rulemaking file pursuant to Sections 11346.8(d) and 11346.9(a)(1). Section 11347.1 requires additional public comment on certain material that is added to the rulemaking file after publication of the notice of proposed action. This is a broader requirement than that provided in Section 11346.8(d), which only requires an opportunity for additional comment regarding material that is added to the rulemaking file after the close of the public hearing or comment period. The broader requirement is consistent with existing practice. This section does not require an additional opportunity for comment in response to a written public comment that is added to the rulemaking file, unless the public comment includes a technical,

theoretical, or empirical study, report, or similar document on which the agency chooses to rely in proposing the rulemaking action.

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

SEC. \_\_\_\_\_. Section 11347.3 of the Government Code is amended to read:

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

(b) The rulemaking file shall include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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 govern the interpretation of this chapter:

(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 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, "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 solely on a statement of its rationale for the necessity of the regulation under this subdivision shall explain why the necessity of the regulation cannot, as a practical matter, be demonstrated by facts or expert opinion.

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

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

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

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

(f) "Nonduplication" means that a regulation does not serve the same purpose as a state or federal statute or another regulation. This standard requires that an agency proposing to amend or adopt a regulation must identify any state or federal

statute or regulation which is overlapped or duplicated by the proposed regulation and justify any overlap or duplication. This standard is not intended to prohibit state agencies from printing relevant portions of enabling legislation in regulations when the duplication is necessary to satisfy the clarity standard in paragraph (3) of subdivision (a) of Section 11349.1. This standard is intended to prevent the indiscriminate incorporation of statutory language in a regulation.

**Comment.** Subdivision (a) of Section 11349 is amended to make two changes:

(1) The meaning of “necessity” is clarified by placing it in the context of the purpose of the regulation. This is consistent with other provisions that relate to the necessity of a regulation. 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). This is a nonsubstantive change.

(2) The evidentiary standard for demonstrating necessity has been revised in recognition of the fact that, in some cases, necessity cannot be factually demonstrated. In such a case, the agency must explain the need for the regulation and must also explain why it cannot provide facts to support its explanation. The adequacy of these explanations is subject to review by the Office of Administrative Law. See Section 11349.3 (OAL may disapprove proposed regulation for failure to comply with requirements of chapter).

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

SEC. \_\_\_\_\_. Section 11349.1 of the Government Code is amended to read:

11349.1. (a) The office shall review all regulations adopted, *amended, or repealed* pursuant to the procedure specified in Article 5 (commencing with Section 11346) and submitted to it for publication in the ~~California Regulatory Code Supplement~~ *California Code of Regulations Supplement* and



for transmittal to the Secretary of State and make determinations using all of the following standards:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Comment.** Section 11349.1 is amended (1) to make clear that it requires review of the repeal of a regulation, as well as the adoption or amendment of a regulation, and (2) to conform to the change in the name of the former California Regulatory Code Supplement. See Section 11344.

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

SEC. \_\_\_\_\_. Section 11349.2 is added to the Government Code, to read:

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

**Comment.** Section 11349.2 is new. It allows an agency to add inadvertently omitted material to a rulemaking file that has been submitted for review by the Office of Administrative Law. See Sections 11346.8(d) (limitation on addition of material to rulemaking file after close of public comment), 11346.9(a)(1) (limitation on use of new data in final statement of reasons), 11347.1 (procedure for additional public comment on material added to rulemaking file).

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

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

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

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

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

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

11349.4. (a) A regulation returned to an agency because of failure to meet the standards of Section 11349.1, because of

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

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

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

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

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

11349.5. (a) To initiate a review of a decision by the office, the agency shall file a written Request for Review with the

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

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

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

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

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

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

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

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

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

SEC. \_\_\_\_\_. Section 11349.6 of the Government Code is amended to read:

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

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

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

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

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

Subdivision (d) is amended to conform the period for review of an emergency regulation under that subdivision to the period for review of nonemergency regulations under Section 11343.3.

## Article 7. Review of Existing Regulations

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

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

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



repeal of the regulation as provided by this section in accordance with the following:

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

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

(c) The office shall review and consider all information submitted by the agency in a timely response to the order to show cause why the regulation should not be repealed, and determine whether the regulation meets the standards set forth in Section 11349.1. The office shall make this determination within 60 days of receipt of an agency's response to the order to show cause. If the office does not make a determination within 60 days of receipt of an agency's response to the order to show cause, the regulation shall be deemed to meet the standards set forth in subdivision (a) of Section 11349.1. In making this determination, the office shall also review any written comments submitted to it by the public within 30 days

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

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

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

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

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

11349.8. (a) If the office is notified of, or on its own becomes aware of, an existing regulation in the California

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

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

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

(2) The statute is temporarily repealed, or rendered ineffective or inoperative by a provision of law which is effective only for a limited period, in which case any regulation described in subdivision (a) is thereby also temporarily repealed, rendered ineffective, or inoperative during that limited period. Any regulation so affected shall

have the same force and effect upon the expiration of the limited period during which the provision of law was effective as if that temporary provision had not been enacted.

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

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

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

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

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

(e) The office shall order the removal of the repealed regulation from the California Code of Regulations within 30 days after filing the Notice of Repeal, if the agency has not appealed the office's decision, or upon receipt of notification

of the Governor's decision upholding the office's decision, if an appeal has been filed pursuant to Section 11349.9.

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

11349.9. (a) To initiate a review of the office's Notice of Repeal pursuant to Section 11349.8, the agency shall appeal the office's decision by filing a written Request for Review with the Governor's Legal Affairs Secretary within 10 days of receipt of the Notice of Repeal and written decision provided for by paragraph (2) of subdivision (d) of Section 11349.8. The Request for Review shall include a complete statement as to why the agency believes the decision is incorrect and should be overruled. Along with the Request for Review, the agency shall submit all of the following:

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

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

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

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

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

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

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

## Article 8. Judicial Review

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

SEC. \_\_\_\_\_. Section 11350 of the Government Code is amended to read:

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

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

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

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

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

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

*(d) In a proceeding under this section, a court may only consider the following evidence:*

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

*(2) The written statement prepared pursuant to subdivision (b) of Section 11346.1.*

*(3) An item that is required to be included in the rulemaking file but is not included in the rulemaking file, for the sole purpose of proving its omission.*

*(4) Any evidence relevant to whether a regulation used by an agency should have been adopted under this chapter.*

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

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

Subdivision (d) is added to correct inadequacies in the former provision limiting the record of review to the rulemaking file. Subdivision (d)(1) restates part of the substance of the former second

paragraph of Section 11350(b)(2), limiting the record of review to the rulemaking file prepared under Section 11347.3. Subdivision (d)(2) permits consideration of an agency statement prepared under Section 11346.1(b) (justifying emergency regulation). Such a statement is not part of a rulemaking file prepared under Section 11347.3. See Section 11346.1(a). Subdivision (d)(3) permits consideration of a document that should have been included in the rulemaking file but was not, in order to prove its omission. Such evidence may be necessary to prove a substantial failure to follow required procedures. For example, an agency's failure to include a public comment in the rulemaking file may constitute a substantial failure to follow required procedures. See Section 11347.3(b)(6) (written public comments must be included in rulemaking file). Proof of such an omission requires consideration of the omitted item. Subdivision (d)(4) permits consideration of any relevant evidence for the purpose of determining whether a regulation used by an agency should have been adopted under this chapter — i.e., whether it is an invalid “underground regulation.” See Section 11340.5 (issuance or use of regulation that has not been adopted is prohibited). Note that evidence offered to prove that an agency has used a regulation that should have been adopted under the rulemaking procedure will typically be documentary evidence, but a court may consider oral testimony in appropriate circumstances (e.g., to judge the credibility of an affiant or declarant).

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

SEC. \_\_\_\_\_. Section 11350.3 of the Government Code is amended to read:

11350.3. Any interested person may obtain a judicial declaration as to the validity of a regulation *or order of repeal* which the office has disapproved ~~or ordered repealed~~ pursuant to Section 11349.3, *or* 11349.6, *or of a regulation that has been ordered repealed pursuant to Section 11349.7* by bringing an action for declaratory relief in the superior court in accordance with the Code of Civil Procedure. The court may declare the regulation valid if it determines that the regulation meets the standards set forth in Section 11349.1 and that the agency has complied with this chapter. If the



court so determines, it may order the office to immediately file the regulation with the Secretary of State.

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

## Article 9. Special Procedures

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

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

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

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

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

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

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

(b) The issuance, denial, or revocation of waste discharge requirements and permits pursuant to Sections 13263 and

13377 of the Water Code and waivers issued pursuant to Section 13269 of the Water Code.

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

SEC. \_\_\_\_\_. Section 11353 of the Government Code is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11354. Sections 11352 and 11353 do not affect any court's determination, relating to the applicability of this chapter to any provision of a policy, plan, or guideline, in a civil action which was pending on June 1, 1992, and on that date included a challenge to a provision of a policy, plan, or guideline on

the grounds that it has not been adopted in accordance with this chapter.

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

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

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

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

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

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

(A) A clear and concise summary of any regulatory provision adopted or approved by the commission as part of

the proposed change for publication in the California Code of Regulations.

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

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

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

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

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

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

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

SEC. \_\_\_\_\_. Section 11356 of the Government Code is amended to read:

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

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

**Comment.** Subdivision (a) of Section 11356 is amended to eliminate the implication that the exemption of building standards from review by the Office of Administrative Law is conditioned on approval of the California Building Standards Commission. Note, however, that building standards are subject to review by the California Building Standards Commission under Health and Safety Code Section 18930. Subdivision (a) is also amended to use the defined term "building standard." See Section 11342.530 ("building standard" defined).

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

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

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

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

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

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

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

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

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



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

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

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



## CONFORMING REVISIONS

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

SEC. \_\_\_\_\_. Section 3373 of the Financial Code is amended to read:

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

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

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

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

(c) A regulation adopted pursuant to subdivision (a) does not expire as provided by subdivision (a) and is not subject to subdivision (b) if the commissioner complies with all of the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of the Government Code in adopting

the regulation, including those listed in paragraph (1) of subdivision (b).

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

**Gov't Code § 8546 (technical amendment). Legislative intent regarding Bureau of State Audits**

SEC. \_\_\_\_\_. Section 8546 of the Government Code is amended to read:

8546. It is the intent of the Legislature that the Bureau of State Audits have the independence necessary to conduct all of its audits in conformity with "Government Auditing Standards" published by the Comptroller General of the United States and the standards published by the American Institute of Certified Public Accountants, free from influence of existing state control agencies that could be the subject of audits conducted by the bureau. Therefore, all of the following exclusions apply to the office:

(a) Notwithstanding Section 19790, the State Auditor shall establish an affirmative action program that shall meet the criteria and objectives established by the State Personnel Board and shall report annually to the State Personnel Board and the commission.

(b) Notwithstanding Section 12470, the State Auditor shall be responsible for maintaining its payroll system. In lieu of audits of the uniform payroll system performed by the Controller or any other department, the office shall contract pursuant to subdivision (e) of Section 8544.5 for an annual audit of its payroll and financial operations by an independent public accountant.

(c) Notwithstanding Sections 11730 and 13292, the State Auditor is delegated the authority to establish and administer the fiscal and administrative policies of the bureau in

conformity with the State Administrative Manual without oversight by the Department of Finance, the Office Department of Information Technology, or any other state agency.

(d) Notwithstanding Section 11032, the State Auditor may approve actual and necessary traveling expenses for travel outside the state for officers and employees of the bureau.

(e) Notwithstanding Section 11033, the State Auditor or officers and employees of the bureau may be absent from the state on business of the state upon approval of the State Auditor or Chief Deputy State Auditor.

(f) Sections 11040, 11042, and 11043 shall not apply to the Bureau of State Audits. The State Auditor may employ legal counsel under those terms that he or she deems necessary to conduct the legal business of, or render legal counsel to, the State Auditor.

(g) The provisions and definitions of ~~Section 11342~~ *Article 2 (commencing with Section 11342.510) of Chapter 3.5 of Division 3* shall not be construed to include the Bureau of State Audits. The State Auditor may adopt regulations necessary for the operation of the bureau pursuant to the provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Division 3), but these regulations shall not be subject to the review or approval of the Office of Administrative Law.

(h) The State Auditor shall be exempt from all contract requirements of the Public Contract Code that require oversight, review, or approval by the Department of General Services or any other state agency. The State Auditor may contract on behalf of the State of California for goods and services that he or she deems necessary for the furtherance of the purposes of the bureau.

(i)(1) Subject to Article VII of the California Constitution, the State Auditor is delegated the authority to establish and

administer the personnel policies and practices of the Bureau of State Audits in conformity with Part 2.6 (commencing with Section 19815) of Division 5 of Title 2 without oversight or approval by the Department of Personnel Administration.

(2) At the election of the State Auditor, officers and employees of the bureau may participate in benefits programs administered by the Department of Personnel Administration subject to the same conditions for participation that apply to civil service employees in other state agencies. For the purposes of benefits programs administration only, the State Auditor is subject to the determinations of the department. The Bureau of State Audits shall reimburse the Department of Personnel Administration for the normal administrative costs incurred by the Department of Personnel Administration and for any extraordinary costs resulting from the inclusion of the bureau employees in these state benefit programs.

**Comment.** Section 8546 is amended to correct the reference to former Section 11342, which has been continued without substantive change in Article 2 (commencing with Section 11342) of Chapter 3.5 of Part 1 of Division 3 and in Section 11340.9(b)-(d).

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

SEC. \_\_\_\_\_. Section 27491.41 of the Government Code is amended to read:

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

(b) The Legislature finds and declares that sudden infant death syndrome (SIDS) is the leading cause of death for children under age one, striking one out of every 500 children. The Legislature finds and declares that sudden infant death syndrome is a serious problem within the State of

California, and that public interest is served by research and study of sudden infant death syndrome, and its potential causes and indications.

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

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

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

(f) The State Department of Health Services shall establish procedures and protocols for access by researchers to any tissues, or other materials or data authorized by this section. Research may be conducted by any individual with a valid scientific interest and prior approval from the State

Committee for the Protection of Human Subjects. The tissue samples, the materials, and all data shall be subject to the confidentiality requirements of Section 103850 of the Health and Safety Code.

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

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

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

**Comment.** Section 27491.41 is amended to correct an erroneous reference to former Article 2 (commencing with Section 11342) of Chapter 3.5 of Part 1 of Division 3 of Title 2.

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

SEC. \_\_\_\_\_. Section 57004 of the Health and Safety Code is amended to read:

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

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

(A) A regulation, as defined in ~~subdivision (g) of Section 11342~~ *Section 11342.600* of the Government Code.

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



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

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

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

(d) No board, department, or office within the agency shall take any action to adopt the final version of a rule unless all of the following conditions are met:

(1) The board, department, or office submits the scientific portions of the proposed rule, along with a statement of the scientific findings, conclusions, and assumptions on which the scientific portions of the proposed rule are based and the

supporting scientific data, studies, and other appropriate materials, to the external scientific peer review entity for its evaluation.

(2) The external scientific peer review entity, within the timeframe agreed upon by the board, department, or office and the external scientific peer review entity, prepares a written report that contains an evaluation of the scientific basis of the proposed rule. If the external scientific peer review entity finds that the board, department, or office has failed to demonstrate that the scientific portion of the proposed rule is based upon sound scientific knowledge, methods, and practices, the report shall state that finding, and the reasons explaining the finding, within the agreed-upon timeframe. The board, department, or office may accept the finding of the external scientific peer review entity, in whole, or in part, and may revise the scientific portions of the proposed rule accordingly. If the board, department, or office disagrees with any aspect of the finding of the external scientific peer review entity, it shall explain, and include as part of the rulemaking record, its basis for arriving at such a determination in the adoption of the final rule, including the reasons why it has determined that the scientific portions of the proposed rule are based on sound scientific knowledge, methods, and practices.

(e) The requirements of this section do not apply to any emergency regulation adopted pursuant to subdivision (b) of Section 11346.1 of the Government Code.

(f) Nothing in this section shall be interpreted to, in any way, limit the authority of a board, department, or office within the agency to adopt a rule pursuant to the requirements of the statute that authorizes or requires the adoption of the rule.

**Comment.** Section 57004 is amended to substitute a reference to the provision that continues the definition of “regulation” in former Government Code Section 11342(g).

**Penal Code § 5058 (technical amendment). Rulemaking**

SEC. \_\_\_\_\_. Section 5058 of the Penal Code is amended to read:

5058. (a) The director may prescribe and amend rules and regulations for the administration of the prisons and for the administration of the parole of persons sentenced under Section 1170 except those persons who meet the criteria set forth in Section 2962. The rules and regulations shall be promulgated and filed pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, except as otherwise provided in this section. All rules and regulations shall, to the extent practical, be stated in language that is easily understood by the general public.

For any rule or regulation filed as regular rulemaking as defined in paragraph (5) of subdivision (a) of Section 1 of Title 1 of the California Code of Regulations, copies of the rule or regulation shall be posted in conspicuous places throughout each institution and shall be mailed to all persons or organizations who request them no less than 20 days prior to its effective date.

(b) The director shall maintain, publish and make available to the general public, a compendium of the rules and regulations promulgated by the director or director's designee pursuant to this section.

(c) The following are deemed not to be "regulations" as defined in ~~subdivision (b) of Section 11342~~ *Section 11342.600* of the Government Code:

(1) Rules issued by the director or by the director's designee applying solely to a particular prison or other correctional facility, provided that the following conditions are met:

(A) All rules that apply to prisons or other correctional facilities throughout the state are adopted by the director

pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(B) All rules except those that are excluded from disclosure to the public pursuant to subdivision (f) of Section 6254 of the Government Code are made available to all inmates confined in the particular prison or other correctional facility to which the rules apply and to all members of the general public.

(2) Short-term criteria for the placement of inmates in a new prison or other correctional facility, or subunit thereof, during its first six months of operation, or in a prison or other correctional facility, or subunit thereof, planned for closing during its last six months of operation, provided that the criteria are made available to the public and that an estimate of fiscal impact is completed pursuant to Section 6055, and following, of the State Administrative Manual dated July 1986.

(3) Rules issued by the director or director's designee that are excluded from disclosure to the public pursuant to subdivision (f) of Section 6254 of the Government Code.

(d) The following regulations are exempt from Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code under the conditions specified:

(1) Regulations adopted by the director or the director's designee applying to any legislatively mandated or authorized pilot program or a departmentally authorized pilot program, provided that an estimate of fiscal impact is completed pursuant to Section 6055, and following, of the State Administrative Manual dated July 1986, and that the following conditions are met:

(A) A pilot program affecting male inmates only shall affect no more than 10 percent of the total state male inmate population; a pilot program affecting female inmates only

shall affect no more than 10 percent of the total state female inmate population; and a pilot program affecting male and female inmates shall affect no more than 10 percent of the total state inmate population.

(B) The director certifies in writing that the regulations apply to a pilot program that qualifies for exemption under this subdivision.

(C) The certification and regulations are filed with the Office of Administrative Law and the regulations are made available to the public by publication pursuant to subparagraph (F) of paragraph (2) of subdivision (b) of Section 6 of Title 1 of the California Code of Regulations.

The regulations shall become effective immediately upon filing with the Secretary of State and shall lapse by operation of law two years after the date of the director's certification unless formally adopted by the director pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) Action or actions, or policies implementing them, taken by the department and based upon a determination of imminent danger by the director or the director's designee that there is a compelling need for immediate action, and that unless that action is taken, serious injury, illness, or death is likely to result. The action or actions, or policies implementing them, may be taken provided that the following conditions shall subsequently be met:

(A) A written determination of imminent danger shall be issued describing the compelling need and why the specific action or actions must be taken to address the compelling need.

(B) The written determination of imminent danger shall be mailed within 10 working days to every person who has filed a request for notice of regulatory actions with the department

and to the Chief Clerk of the Assembly and the Secretary of the Senate for referral to the appropriate policy committees.

Any policy in effect pursuant to a determination of imminent danger shall lapse by operation of law 15 calendar days after the date of the written determination of imminent danger unless an emergency regulation is filed with the Office of Administrative Law pursuant to subdivision (e). This section shall in no way exempt the department from compliance with other provisions of law related to fiscal matters of the state.

(e) Emergency regulations shall be adopted pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, except that:

(1) Notwithstanding subdivision (e) of Section 11346.1 of the Government Code, the initial effective period for emergency regulations shall be 160 days.

(2) No showing of emergency is necessary in order to adopt emergency regulations other than a written statement by the director or the director's designee, to be filed with the Office of Administrative Law, certifying that operational needs of the department require adoption of the regulations on an emergency basis.

(3) This subdivision shall apply only to the adoption and one readoption of any emergency regulation.

It is the intent of the Legislature, in authorizing the deviations in this subdivision from the requirements and procedures of Chapter 3.5 (commencing with Section ~~113340~~ 11340) of Part 1 of Division 3 of Title 2 of the Government Code, to authorize the department to expedite the exercise of its power to implement regulations as its unique operational circumstances require.

**Comment.** Section 5058 is amended to substitute a reference to the provision that continues the definition of "regulation" in former Government Code Section 11342(g) and to correct an erroneous reference in the final paragraph.

**Pub. Res. Code § 25620.2 (technical amendment). Administration of program**

SEC. \_\_\_\_\_. Section 25620.2 of the Public Resources Code is amended to read:

25620.2. (a) The commission shall administer the program in a manner that is consistent with the purposes of Chapter 854 of the Statutes of 1996, and shall ensure that the program meets all of the following criteria:

(1) Demonstrates a balance of benefits to all sectors that contribute to the funding under Section 381 of the Public Utilities Code.

(2) Addresses key technical and scientific barriers.

(3) Demonstrates a balance between short-term, mid-term, and long-term potential.

(4) Ensures that research currently, previously, or about to be undertaken by research organizations is not unnecessarily duplicated.

(b) To ensure the efficient implementation and administration of the program, the commission shall do both of the following:

(1) Develop procedures for the solicitation of award applications for project or program funding, and to ensure efficient program management.

(2) Evaluate and select programs and projects, based on merit, that will be funded under the program.

(c) To ensure the success of electric industry restructuring in the transition to a new market structure and to implement the program, the commission shall adopt regulations, as defined in ~~subdivision (g) of Section 11342~~ *Section 11342.600* of the Government Code, in accordance with the following procedures:

(1) Prepare a preliminary text of the proposed regulation and provide a copy of the preliminary text to any person requesting a copy.

(2) Provide public notice of the proposed regulation to any person who has requested notice of the regulations prepared by the commission. The notice shall contain all of the following:

(A) A clear overview explaining the proposed regulation.

(B) Instructions on how to obtain a copy of the proposed regulations.

(C) A statement that if a public hearing is not scheduled for the purpose of reviewing a proposed regulation, any person may request, not later than 15 days prior to the close of the written comment period, a public hearing conducted in accordance with the procedures set forth in Section 11346.8 of the Government Code.

(D) A deadline for the submission of written comments.

(3) Accept written public comments for 30 calendar days after providing the notice required in paragraph (2).

(4) Certify that all written comments were read and considered by the commission.

(5) Place all written comments in a record that includes copies of any written factual support used in developing the proposed regulation, including written reports and copies of any transcripts or minutes in connection with any public hearings on the adoption of the regulation. The record shall be open to public inspection and available to the courts.

(6) Provide public notice of any substantial revision of the proposed regulation at least 15 days prior to the expiration of the deadline for public comments and comment period using the procedures provided in paragraph (2).

(7) Conduct public hearings, if a hearing is requested by an interested party, that shall be conducted in accordance with the procedures set forth in Section 11346.8 of the Government Code.

(8) Adopt any proposed regulation at a regularly scheduled and noticed meeting of the commission. The regulation shall



become effective immediately unless otherwise provided by the commission.

(9) Publish any adopted regulation in a manner that makes copies of the regulation easily available to the public. Any adopted regulation shall also be made available on the Internet. The commission shall transmit a copy of an adopted regulation to the Office of Administrative Law for publication, or, if the commission determines that printing the regulation is impractical, an appropriate reference as to where a copy of the regulation may be obtained.

(10) Notwithstanding any other provision of law, this subdivision provides an interim exception from the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code for regulations required to implement Sections 25621 and 25622 that are adopted under the procedures specified in this subdivision.

(11) This subdivision shall become inoperative on January 1, 2000, unless a later enacted statute deletes or extends that date. However, after January 1, 2000, the commission shall not be required to repeat any procedural step in adopting a regulation that has been completed before January 1, 2000, using the procedures specified in this subdivision.

**Comment.** Section 25620.2 is amended to substitute a reference to the provision that continues the definition of "regulation" in former Government Code Section 11342(g).

**Welf. & Inst. Code § 11462.4 (technical amendment). Community care facility deemed small business**

SEC. \_\_\_\_\_. Section 11462.4 of the Welfare and Institutions Code is amended to read:

11462.4. Notwithstanding Section ~~11342~~ *11342.610* of the Government Code, group homes and foster family agencies shall be deemed small businesses and the department shall project the impact on group homes and foster family agencies

of any new regulations which will affect those community care facilities.

**Comment.** Section 11462.4 is amended to substitute a reference to the provision that continues the definition of “small business” in former Government Code Section 11342(h).

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