

ASSEMBLY BILL

No. 1822

Introduced by Assembly Member Wayne

February 3, 2000

An act to amend Section 3373 of the Financial Code, to amend Sections 8546, 11340.5, 11343, 11343.4, 11343.5, 11344, 11344.1, 11344.2, 11344.4, 11344.6, 11344.7, 11344.9, 11346, 11346.1, 11346.2, 11346.3, 11346.5, 11346.8, 11346.9, 11347.3, 11349, 11349.1, 11349.6, 11350, 11350.3, 11353, 11356, and 27491.41 of, to amend the heading of Article 4 (commencing with Section 11344) of Chapter 3.5 of Division 3 of Title 2 of, to add Sections 11340.8, 11340.9, 11347.1, and 11349.2 to, to add Article 2 (commencing with Section 11342.510) to Chapter 3.5 of Division 3 of Title 2 of, to repeal Sections 11342 and 11346.54 of, and to repeal the heading of Article 2 (commencing with Section 11342) of Chapter 3.5 of Division 3 of Title 2 of, the Government Code, to amend Section 57004 of the Health and Safety Code, to amend Section 5058 of the Penal Code, to amend Section 25620.2 of the Public Resources Code, and to amend Section 11462.4 of the Welfare and Institutions Code, relating to administrative rulemaking.

LEGISLATIVE COUNSEL'S DIGEST

AB 1822, as introduced, Wayne. Administrative Procedure Act.

The Administrative Procedure Act generally sets forth the requirements for the adoption, publication, review, and implementation of regulations by state agencies.

This bill would make various revisions in the act, as follows:

(1) Provide for the use of electronic communication in the delivery and publication of notices and rulemaking documents.

(2) Authorize state agencies to consult with interested persons before initiating regulatory action.

(3) Revise the provisions governing preliminary determinations made by a state agency with respect to certain notices of proposed actions to specify that the determinations may be made on the basis of the agency's belief.

(4) Specify that certain findings required with regard to report requirements for businesses be included in a rulemaking notice.

(5) Revise provisions requiring the use of plain English with regard to regulations affecting small businesses, to apply to all regulations, and to revise the definition of the term 'plain English' for these purposes.

(6) Require oral testimony to be allowed at public hearings on proposed regulations, subject to reasonable limitations.

(7) Revise the manner in which a state agency may respond to repetitive or irrelevant comments in its statement of reasons for adopting, amending, or repealing a regulation.

(8) Revise provisions governing the availability and content of the rulemaking file.

(9) Revise certain rulemaking requirements to apply to a proposed repeal of a regulation as well as a proposed adoption or amendment of a regulation.

(10) Create an exception to the rulemaking requirements of the act for a regulation that establishes criteria or guidelines to be used by the staff of a state 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, subject to specified conditions.

(11) Create an exception to the rulemaking requirements of the act for a state agency rule that is the only legally tenable interpretation of a provision of law.

(12) Revise provisions of the act relating to standards for demonstrating the necessity of a proposed regulation by a state agency.



(13) Specify that the period for review of a proposal to make an emergency regulation permanent is 30 working days, rather than 30 days.

(14) Extend the period during which an emergency regulation is valid from 120 days to 180 days.

(15) Provide for judicial review of an order of repeal of a regulation as well as a regulation, and expand the types of evidence that a court may consider as part of the review proceeding.

(16) Change the name of the California Regulatory Code Supplement to the California Code of Regulations Supplement.

(17) Revise the format required for State Water Resources Control Board policies, plans, and guidelines submitted to the Office of Administrative Law.

(18) Make various technical or clarifying changes.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3373 of the Financial Code is
2 amended to read:

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

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

16 (2) The commissioner shall file any regulation adopted
17 pursuant to subdivision (a), together with a citation to
18 subdivision (a) as authority for the adoption and a citation
19 to the provisions of federal law made applicable by the

1 regulation, with the Office of Administrative Law for
2 filing with the Secretary of State and publication in the
3 California Code of Regulations.

4 (3) A regulation adopted under subdivision (a) shall
5 become effective on the date it is filed with the Secretary
6 of State unless the commissioner prescribed a later date
7 in the regulation or in a written instrument filed with the
8 regulation.

9 (c) A regulation adopted pursuant to subdivision (a)
10 does not expire as provided by subdivision (a) and is not
11 subject to subdivision (b) if the commissioner complies
12 with all of the provisions of Chapter 3.5 (commencing
13 with Section 11340) of Part 1 of Division 3 of the
14 Government Code in adopting the regulation, including
15 those listed in paragraph (1) of subdivision (b).

16 SEC. 2. Section 8546 of the Government Code is
17 amended to read:

18 8546. It is the intent of the Legislature that the Bureau
19 of State Audits have the independence necessary to
20 conduct all of its audits in conformity with "Government
21 Auditing Standards" published by the Comptroller
22 General of the United States and the standards published
23 by the American Institute of Certified Public
24 Accountants, free from influence of existing state control
25 agencies that could be the subject of audits conducted by
26 the bureau. Therefore, all of the following exclusions
27 apply to the office:

28 (a) Notwithstanding Section 19790, the State Auditor
29 shall establish an affirmative action program that shall
30 meet the criteria and objectives established by the State
31 Personnel Board and shall report annually to the State
32 Personnel Board and the commission.

33 (b) Notwithstanding Section 12470, the State Auditor
34 shall be responsible for maintaining its payroll system. In
35 lieu of audits of the uniform payroll system performed by
36 the Controller or any other department, the office shall
37 contract pursuant to subdivision (e) of Section 8544.5 for
38 an annual audit of its payroll and financial operations by
39 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

1 to establish and administer the personnel policies and
2 practices of the Bureau of State Audits in conformity with
3 Part 2.6 (commencing with Section 19815) of Division 5
4 of Title 2 without oversight or approval by the
5 Department of Personnel Administration.

6 (2) At the election of the State Auditor, officers and
7 employees of the bureau may participate in benefits
8 programs administered by the Department of Personnel
9 Administration subject to the same conditions for
10 participation that apply to civil service employees in
11 other state agencies. For the purposes of benefits
12 programs administration only, the State Auditor is subject
13 to the determinations of the department. The Bureau of
14 State Audits shall reimburse the Department of
15 Personnel Administration for the normal administrative
16 costs incurred by the Department of Personnel
17 Administration and for any extraordinary costs resulting
18 from the inclusion of the bureau employees in these state
19 benefit programs.

20 SEC. 3. Section 11340.5 of the Government Code is
21 amended to read:

22 11340.5. (a) No state agency shall issue, utilize,
23 enforce, or attempt to enforce any guideline, criterion,
24 bulletin, manual, instruction, order, standard of general
25 application, or other rule, which is a regulation as defined
26 in ~~subdivision (g) of Section 11342~~ *Section 11342.600*,
27 unless the guideline, criterion, bulletin, manual,
28 instruction, order, standard of general application, or
29 other rule has been adopted as a regulation and filed with
30 the Secretary of State pursuant to this chapter.

31 (b) If the office is notified of, or on its own, learns of the
32 issuance, enforcement of, or use of, an agency guideline,
33 criterion, bulletin, manual, instruction, order, standard of
34 general application, or other rule that has not been
35 adopted as a regulation and filed with the Secretary of
36 State pursuant to this chapter, the office may issue a
37 determination as to whether the guideline, criterion,
38 bulletin, manual, instruction, order, standard of general
39 application, or other rule, is a regulation as defined in
40 ~~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*.

SEC. 4. 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.

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

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

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

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

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

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

30 SEC. 5. Section 11340.9 is added to the Government
31 Code, to read:

32 11340.9. This chapter does not apply to any of the
33 following:

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

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

38 (c) A form prescribed by a state agency or any
39 instructions relating to the use of the form, but this
40 provision is not a limitation on any requirement that a

1 regulation be adopted pursuant to this chapter when one
2 is needed to implement the law under which the form is
3 issued.

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

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

13 (1) Enable a law violator to avoid detection.

14 (2) Facilitate disregard of requirements imposed by
15 law.

16 (3) Give clearly improper advantage to a person who
17 is in an adverse position to the state.

18 (f) A regulation that embodies the only legally tenable
19 interpretation of a provision of law.

20 (g) A regulation that establishes or fixes rates, prices,
21 or tariffs.

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

28 (i) A regulation that is directed to a specifically named
29 person or to a group of persons and does not apply
30 generally throughout the state.

31 SEC. 6. The heading of Article 2 (commencing with
32 Section 11342) of Chapter 3.5 of Part 1 of Division 3 of
33 Title 2 of the Government Code is repealed.

34

35 ~~Article 2. Rules and Regulations~~

36

37 SEC. 7. Section 11342 of the Government Code is
38 repealed.

39 ~~11342. In this chapter, unless otherwise specifically~~
40 ~~indicated, the following definitions apply:~~

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

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

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

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

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

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

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

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

40 ~~(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.~~

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

4 SEC. 8. Article 2 (commencing with Section
5 11342.510) is added to Chapter 3.5 of Part 1 of Division 3
6 of Title 2 of the Government Code, to read:

7

8 Article 2. Definitions

9

10 11342.510. Unless the provision or context otherwise
11 requires, the definitions in this article govern the
12 construction of this chapter.

13 11342.520. “Agency” means state agency.

14 11342.530. “Building standard” has the same meaning
15 provided in Section 18909 of the Health and Safety Code.

16 11342.540. “Director” means the director of the
17 office.

18 11342.550. “Office” means the Office of
19 Administrative Law.

20 11342.560. “Order of repeal” means any resolution,
21 order, or other official act of a state agency that expressly
22 repeals a regulation in whole or in part.

23 11342.570. “Performance standard” means a
24 regulation that describes an objective with the criteria
25 stated for achieving the objective.

26 11342.580. “Plain English” means language that
27 satisfies the standard of clarity provided in Section 11349.

28 11342.590. “Prescriptive standard” means a
29 regulation that specifies the sole means of compliance
30 with a performance standard by specific actions,
31 measurements, or other quantifiable means.

32 11342.600. “Regulation” means every rule,
33 regulation, order, or standard of general application or
34 the amendment, supplement, or revision of any rule,
35 regulation, order, or standard adopted by any state
36 agency to implement, interpret, or make specific the law
37 enforced or administered by it, or to govern its
38 procedure.

39 11342.610. (a) “Small business” means a business
40 activity in agriculture, general construction, special trade



1 construction, retail trade, wholesale trade, services,
2 transportation and warehousing, manufacturing,
3 generation and transmission of electric power, or a health
4 care facility, unless excluded in subdivision (b), that is
5 both of the following:

6 (1) Independently owned and operated.

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

8 (b) “Small business” does not include the following
9 professional and business activities:

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

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

17 (3) A mineral, oil, or gas broker.

18 (4) A subdivider or developer.

19 (5) A landscape architect, an architect, or a building
20 designer.

21 (6) An entity organized as a nonprofit institution.

22 (7) An entertainment activity or production,
23 including a motion picture, a stage performance, a
24 television or radio station, or a production company.

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

28 (9) A petroleum producer, a natural gas producer, a
29 refiner, or a pipeline.

30 (10) A manufacturing enterprise exceeding 250
31 employees.

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

35 (c) “Small business” does not include the following
36 business activities:

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

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

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

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

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

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

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

16 SEC. 9. Section 11343 of the Government Code is
17 amended to read:

18 11343. Every state agency shall:

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

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

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

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

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

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

37 (c) Deliver to the office, at the time of transmittal for
38 filing a regulation or order of repeal six duplicate copies
39 of the regulation or order of repeal, together with a

1 citation of the authority pursuant to which it or any part
2 thereof was adopted.

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

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

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

22 SEC. 10. Section 11343.4 of the Government Code is
23 amended to read:

24 11343.4. A regulation or an order of repeal required to
25 be filed with the Secretary of State shall become effective
26 on the 30th day after the date of filing unless:

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

31 ~~(b) It is a regulation adopted under Section 8054 or~~
32 ~~3373 of the Financial Code, in which event it shall become~~
33 ~~effective upon filing or upon any later date specified by~~
34 ~~the state agency in a written instrument filed with, or as~~
35 ~~part of, the regulation or order of repeal.~~

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

39 ~~(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.

SEC. 11. 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 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.

SEC. 12. 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

SEC. 13. 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 of Regulations* Supplement and shall contain amendments to the code.

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

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

11 SEC. 14. Section 11344.1 of the Government Code is
12 amended to read:

13 11344.1. The office shall do all of the following:

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

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

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

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

29 ~~(4) The Governor's action in reviewing the~~
30 ~~disapprovals of the office, the decisions to repeal, the~~
31 ~~agency's request for review, the office's response thereto,~~
32 ~~and the decisions of the Governor's office, as required by~~
33 ~~Section 11349.7~~ *Material that is required to be published*
34 *under Sections 11349.5, 11349.7, and 11349.9.*

35 (5) Determinations issued pursuant to Section 11340.5.

36 (b) Establish the publication dates and manner and
37 form in which the California Regulatory Notice Register
38 shall be prepared and published and ensure that it is
39 published and distributed in a timely manner to the

1 presiding officer and rules committee of each house of the
2 Legislature and to all subscribers.

3 SEC. 15. Section 11344.2 of the Government Code is
4 amended to read:

5 11344.2. The office shall supply a complete set of the
6 California Code of Regulations, and of the California
7 ~~Regulatory Code Supplement in the form provided by~~
8 ~~the State Printer~~ *Code of Regulations Supplement* to the
9 county clerk of any county or to the delegatee of the
10 county clerk pursuant to Section 26803.5, provided the
11 director makes the following two determinations:

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

16 (b) The California Code of Regulations and California
17 ~~Regulatory Code of Regulations~~ Supplement are not
18 otherwise reasonably available to the public in the
19 community where the county clerk or the delegatee of
20 the county clerk pursuant to Section 26803.5 would
21 normally maintain the code and supplements by
22 distribution to libraries pursuant to Article 6
23 (commencing with Section 14900) of Chapter 7 of Part
24 5.5.

25 SEC. 16. Section 11344.4 of the Government Code is
26 amended to read:

27 11344.4. (a) The California Code of Regulations, the
28 ~~California Regulatory Code of Regulations~~ Supplement,
29 and the California Regulatory Notice Register shall be
30 sold at prices which will reimburse the state for all costs
31 incurred for printing, publication, and distribution.

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

39 SEC. 17. Section 11344.6 of the Government Code is
40 amended to read:

1 11344.6. The publication of a regulation in the
2 California Code of Regulations or California ~~Regulatory~~
3 *Code of Regulations* Supplement raises a rebuttable
4 presumption that the text of the regulation as so
5 published is the text of the regulation adopted.

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

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

13 SEC. 18. Section 11344.7 of the Government Code is
14 amended to read:

15 11344.7. Nothing in this chapter precludes any person
16 or state agency from purchasing copies of the California
17 Code of Regulations, the California—~~Regulatory~~ *Code of*
18 *Regulations* Supplement, or the California Regulatory
19 Notice Register or of any unit of either, nor from printing
20 special editions of any such units and distributing the
21 same. However, where the purchase and printing is by a
22 state agency, the state agency shall do so at the cost or at
23 less than the cost to the agency if it is authorized to do so
24 by other provisions of law.

25 SEC. 19. Section 11344.9 of the Government Code is
26 amended to read:

27 11344.9. (a) Whenever the term “California
28 Administrative Code” appears in law, official legal paper,
29 or legal publication, it means the “California Code of
30 Regulations.”

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

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

1 SEC. 20. Section 11346 of the Government Code is
2 amended to read:

3 11346. (a) It is the purpose of this chapter to establish
4 basic minimum procedural requirements for the
5 adoption, amendment, or repeal of administrative
6 regulations. Except as provided in Section 11346.1, the
7 provisions of this chapter are applicable to the exercise of
8 any quasi-legislative power conferred by any statute
9 heretofore or hereafter enacted, but nothing in this
10 chapter repeals or diminishes additional requirements
11 imposed by any statute. This chapter shall not be
12 superseded or modified by any subsequent legislation
13 except to the extent that the legislation shall do so
14 expressly.

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

19 SEC. 21. Section 11346.1 of the Government Code is
20 amended to read:

21 11346.1. (a) ~~This article does not apply to any~~
22 ~~regulation not required to be filed with the Secretary of~~
23 ~~State under this chapter, and only this section and~~
24 ~~Sections 11343.4 and 11349.6 apply to an emergency~~
25 ~~regulation adopted pursuant to subdivision (b), or to any~~
26 ~~regulation adopted under Section 8054 or 3373 of the~~
27 ~~Financial Code~~ *The adoption, amendment, or repeal of*
28 *an emergency regulation is not subject to any provision*
29 *of this chapter except this section and Section 11349.6.*

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

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

1 of an urgency statute shall not, in and of itself, constitute
2 a need for immediate action.

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

5 (c) Notwithstanding any other provision of law, no
6 emergency regulation that is a building standard,~~as~~
7 ~~defined in Section 18909 of the Health and Safety Code,~~
8 shall be filed, nor shall the building standard be effective,
9 unless the building ~~standards~~ *are standard* is submitted to
10 the ~~State California~~ Building Standards Commission, and
11 ~~are~~ is approved and filed pursuant to Sections 18937 and
12 18938 of the Health and Safety Code.

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

17 (e) No regulation, amendment, or order of repeal
18 adopted as an emergency regulatory action shall remain
19 in effect more than ~~120~~ 180 days unless the adopting
20 agency has complied with Sections 11346.2 to ~~11346.9,~~
21 ~~inclusive, prior to the adoption of the emergency~~
22 ~~regulatory action, or has, within the 120-day period,~~
23 ~~completed the regulation adoption process by formally~~
24 ~~adopting the emergency regulation, amendment, or~~
25 ~~order of repeal or any amendments thereto, pursuant to~~
26 ~~this chapter 11347.3, inclusive, either before adopting an~~
27 ~~emergency regulation or within the 180-day period.~~ The
28 adopting agency, prior to the expiration of the ~~120-day~~
29 ~~180-day~~ period, shall transmit to the office for filing with
30 the Secretary of State the adopted regulation,
31 amendment, or order of repeal, the rulemaking file, and
32 a certification that ~~either Sections 11346.2 to 11346.9,~~
33 ~~inclusive, were complied with prior to the emergency~~
34 ~~regulatory action, or that there was compliance with this~~
35 ~~section within the 120-day period 11347.3, inclusive, were~~
36 ~~complied with either before the emergency regulation~~
37 ~~was adopted or within the 180-day period.~~

38 (f) In the event an emergency amendment or order of
39 repeal is filed and the adopting agency fails to comply
40 with subdivision (e), the regulation as it existed prior to

1 the emergency amendment or order of repeal shall
2 thereupon become effective and after notice to the
3 adopting agency by the office shall be reprinted in the
4 California Code of Regulations.

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

10 (h) ~~A regulation originally adopted as an emergency~~
11 ~~regulation, or an emergency regulation substantially~~
12 ~~equivalent thereto that is readopted as an emergency~~
13 ~~regulation, shall not be filed with the Secretary of State~~
14 ~~as an emergency regulation except with the express prior~~
15 ~~approval of the director of the office~~ *Except with the*
16 *express prior approval of the director, an agency shall not*
17 *adopt an emergency regulation that is substantially*
18 *equivalent to an emergency regulation previously*
19 *adopted by that agency. If the agency proposes the*
20 *adoption of an emergency regulation that is substantially*
21 *equivalent to a previously adopted emergency regulation*
22 *and the director does not expressly approve adoption of*
23 *the emergency regulation, the office shall not file the*
24 *emergency regulation with the Secretary of State.*

25 SEC. 22. Section 11346.2 of the Government Code is
26 amended to read:

27 11346.2. Every agency subject to this chapter shall
28 prepare, submit to the office with the notice of the
29 proposed action as described in Section 11346.5, and make
30 available to the public upon request, all of the following:

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

33 (1) The agency shall draft the regulation in plain,
34 straightforward language, avoiding technical terms as
35 much as possible, and using a coherent and easily
36 readable style. ~~If the regulation affects small business, the~~
37 ~~The agency shall draft the regulation in plain English, as~~
38 ~~defined in subdivision (c) of Section 11342. However, if~~
39 ~~it is not feasible to draft the regulation in plain English~~
40 ~~due to the technical nature of the regulation, the agency~~

1 ~~shall prepare a noncontrolling plain English summary of~~
2 ~~the regulation.~~

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

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

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

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

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

29 ~~(3)~~

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

34 ~~(4)~~

35 (3) (A) A description of the alternatives to the
36 regulation considered by the agency and the agency's
37 reasons for rejecting those alternatives. In the case of a
38 regulation that would mandate the use of specific
39 technologies or equipment or prescribe specific actions

1 or procedures, the imposition of performance standards
2 shall be considered as an alternative.

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

8 ~~(5)–~~

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

13 ~~(6)–~~

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

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

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

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



1 chapter with respect to any provisions in the regulation
2 that the agency proposes to adopt or amend that are
3 different from the corresponding provisions of the
4 federal regulation.

5 SEC. 23. Section 11346.3 of the Government Code is
6 amended to read:

7 11346.3. (a) State agencies proposing to adopt ~~or~~,
8 amend, *or repeal* any administrative regulation shall
9 assess the potential for adverse economic impact on
10 California business enterprises and individuals, avoiding
11 the imposition of unnecessary or unreasonable
12 regulations or reporting, recordkeeping, or compliance
13 requirements. For purposes of this subdivision assessing
14 the potential for adverse economic impact shall require
15 agencies, when ~~adopting new regulations or reviewing or~~
16 ~~amending existing regulations~~ *proposing to adopt,*
17 *amend, or repeal a regulation,* to adhere to the following
18 requirements, to the extent that these requirements do
19 not conflict with other state or federal laws:

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

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

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

1 ~~regulations~~ a proposed adoption, amendment, or repeal
2 of a regulation.

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

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

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

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

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

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

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

31 SEC. 24. Section 11346.5 of the Government Code is
32 amended to read:

33 11346.5. (a) The notice of proposed adoption,
34 amendment, or repeal of a regulation shall include the
35 following:

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

39 (2) Reference to the authority under which the
40 regulation is proposed and a reference to the particular

1 code sections or other provisions of law that are being
2 implemented, interpreted, or made specific.

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

9 ~~(A) bills. The informative digest shall include the~~
10 ~~following:~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (8) If a state agency, in adopting ~~or~~, amending, *or*
36 *repealing* any administrative regulation, ~~determines~~
37 *believes* that the action will not have a significant adverse
38 economic impact on business, including the ability of
39 California businesses to compete with businesses in other
40 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

1 less burdensome to affected private persons than the
2 proposed action.

3 ~~(13)~~

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

7 ~~(14)~~

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

14 ~~(15)~~

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

20 ~~(16)~~

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

26 ~~(17)~~

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

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

39 (c) This section shall not be construed in any manner
40 that results in the invalidation of a regulation because of

1 the alleged inadequacy of the notice content or the
2 summary or cost estimates, or the alleged inadequacy or
3 inaccuracy of the housing cost estimates, if there has been
4 substantial compliance with those requirements.

5 SEC. 25. Section 11346.54 of the Government Code is
6 repealed.

7 ~~11346.54. (a) All state agencies proposing to adopt or~~
8 ~~amend any administrative regulation shall assess whether~~
9 ~~and to what extent it will affect the following:~~

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

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

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

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

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

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

29 SEC. 26. Section 11346.8 of the Government Code is
30 amended to read:

31 11346.8. (a) If a public hearing is held, *both oral and*
32 *written* statements, arguments, or contentions, ~~either~~
33 ~~oral or in writing, or both~~, shall be permitted. *The agency*
34 *may impose reasonable limitations on oral presentations.*
35 If a public hearing is not scheduled, the state agency shall,
36 consistent with Section 11346.4, afford any interested
37 person or his or her duly authorized representative, the
38 opportunity to present statements, arguments or
39 contentions in writing. In addition, a public hearing shall
40 be held if, no later than 15 days prior to the close of the

1 written comment period, an interested person or his or
2 her duly authorized representative submits in writing to
3 the state agency, a request to hold a public hearing. The
4 state agency shall, to the extent practicable, provide
5 notice of the time, date, and place of the hearing by
6 mailing the notice to every person who has filed a request
7 for notice thereby with the state agency. The state agency
8 shall consider all relevant matter presented to it before
9 adopting, amending, or repealing any regulation.

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

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

33 (d) No state agency shall add any material to the
34 record of the rulemaking proceeding after the close of the
35 public hearing or comment period, unless ~~adequate~~
36 ~~provision is made for public comment on that matter the~~
37 *agency complies with Section 11347.1. This subdivision*
38 *does not apply to material prepared pursuant to Section*
39 *11346.9.*

1 SEC. 27. Section 11346.9 of the Government Code is
2 amended to read:

3 11346.9. Every agency subject to this chapter shall do
4 the following:

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

8 (1) An update of the information contained in the
9 initial statement of reasons. If the update identifies any
10 data or any technical, theoretical or empirical study,
11 report, or similar document on which the agency is
12 relying in proposing the adoption ~~or~~, amendment, *or*
13 *repeal* of a regulation that was not identified in the initial
14 statement of reasons, or which was otherwise not
15 identified or made available for public review prior to the
16 close of the public comment period, the agency shall
17 comply with ~~subdivision (d) of Section 11346.8~~ *Section*
18 *11347.1*.

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

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

1 *comments or summarily dismiss irrelevant comments as*
2 *a group.*

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

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

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

20 (c) A state agency that adopts or amends a regulation
21 mandated by federal law or regulations, the provisions of
22 which are identical to a previously adopted or amended
23 federal regulation, shall be deemed to have complied
24 with this section if a statement to the effect that a
25 federally mandated regulation or amendment to a
26 regulation is being proposed, together with a citation to
27 where an explanation of the provisions of the regulation
28 can be found, is included in the notice of proposed
29 adoption or amendment prepared pursuant to Section
30 11346.5. However, the agency shall comply fully with this
31 chapter with respect to any provisions in the regulation
32 which the agency proposes to adopt or amend that are
33 different from the corresponding provisions of the
34 federal regulation.

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

1 SEC. 28. Section 11347.1 is added to the Government
2 Code, to read:

3 11347.1. (a) An agency that adds any technical,
4 theoretical, or empirical study, report, or similar
5 document to the rulemaking file after publication of the
6 notice of proposed action and relies on the document in
7 proposing the action shall make the document available
8 as required by this section.

9 (b) At least 15 calendar days before the proposed
10 action is submitted to the office for review and filing with
11 the Secretary of State, the agency shall mail to all of the
12 following persons a notice identifying the added
13 document and stating the place and business hours that
14 the document is available for public inspection:

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

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

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

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

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

28 (d) Written comments on the document or
29 information received by the agency during the
30 availability period shall be summarized and responded to
31 in the final statement of reasons as provided in Section
32 11346.9.

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

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

1 SEC. 29. Section 11347.3 of the Government Code is
2 amended to read:

3 11347.3. (a) Every agency shall maintain a file of
4 each rulemaking that shall be deemed to be the record for
5 that rulemaking proceeding. *Commencing no later than*
6 *the date that the notice of the proposed action is*
7 *published in the California Regulatory Notice Register,*
8 *and during all subsequent periods of time that the file is*
9 *in the agency's possession, the agency shall make the file*
10 *available to the public for inspection and copying during*
11 *regular business hours.*

12 (b) The rulemaking file shall include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (f) The agency may transmit the rulemaking file to the
39 State Archives. The file shall include instructions that the
40 Secretary of State shall not remove, alter, or destroy or

1 otherwise dispose of any item contained in the file.
2 Pursuant to Section 12223.5, the Secretary of State may
3 designate a time for the delivery of the rulemaking file to
4 the State Archives in consideration of document
5 processing or storage limitations.

6 SEC. 30. Section 11349 of the Government Code is
7 amended to read:

8 11349. The following definitions govern the
9 interpretation of this chapter:

10 (a) “Necessity” means the record of the rulemaking
11 proceeding demonstrates by substantial evidence the
12 need for a regulation ~~taking into account the totality of~~
13 ~~the record. For purposes of this standard, evidence~~
14 ~~includes, but is not limited to, facts, studies, and expert~~
15 ~~opinion to effectuate the purpose of the statute, court~~
16 ~~decision, or other provision of law that the regulation~~
17 ~~implements, interprets, or makes specific, taking into~~
18 ~~account the totality of the record. For the purposes of this~~
19 ~~subdivision, “evidence” includes rationales, facts, studies,~~
20 ~~and expert opinion. Where the need for a regulation is~~
21 ~~based on policy judgments and cannot, as a practical~~
22 ~~matter, be demonstrated by facts or expert opinion, a~~
23 ~~statement of the adopting agency’s rationale for the~~
24 ~~necessity of the regulation shall be considered substantial~~
25 ~~evidence. An agency that relies solely on a statement of~~
26 ~~its rationale for the necessity of the regulation under this~~
27 ~~subdivision shall explain why the necessity of the~~
28 ~~regulation cannot, as a practical matter, be demonstrated~~
29 ~~by facts or expert opinion.~~

30 (b) “Authority” means the provision of law which
31 permits or obligates the agency to adopt, amend, or
32 repeal a regulation.

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

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

39 (e) “Reference” means the statute, court decision, or
40 other provision of law which the agency implements,

1 interprets, or makes specific by adopting, amending, or
2 repealing a regulation.

3 (f) “Nonduplication” means that a regulation does not
4 serve the same purpose as a state or federal statute or
5 another regulation. This standard requires that an agency
6 proposing to amend or adopt a regulation must identify
7 any state or federal statute or regulation which is
8 overlapped or duplicated by the proposed regulation and
9 justify any overlap or duplication. This standard is not
10 intended to prohibit state agencies from printing
11 relevant portions of enabling legislation in regulations
12 when the duplication is necessary to satisfy the clarity
13 standard in paragraph (3) of subdivision (a) of Section
14 11349.1. This standard is intended to prevent the
15 indiscriminate incorporation of statutory language in a
16 regulation.

17 SEC. 31. Section 11349.1 of the Government Code is
18 amended to read:

19 11349.1. (a) The office shall review all regulations
20 adopted, *amended, or repealed* pursuant to the
21 procedure specified in Article 5 (commencing with
22 Section 11346) and submitted to it for publication in the
23 California ~~Regulatory~~ *Code of Regulations* Supplement
24 and for transmittal to the Secretary of State and make
25 determinations using all of the following standards:

26 (1) Necessity.

27 (2) Authority.

28 (3) Clarity.

29 (4) Consistency.

30 (5) Reference.

31 (6) Nonduplication.

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

38 (b) In reviewing proposed regulations for the criteria
39 in subdivision (a), the office may consider the clarity of

1 the proposed regulation in the context of related
2 regulations already in existence.

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

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

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

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

23 (3) The adopting agency has prepared the estimate
24 required by paragraph (6) of subdivision (a) of Section
25 11346.5, the estimate indicates that the regulation will
26 result in a cost to local agencies or school districts that is
27 required to be reimbursed under Part 7 (commencing
28 with Section 17500) of Division 4, and the adopting
29 agency fails to do any of the following:

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

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

37 (C) Attach a letter or other documentation from the
38 Department of Finance which states that the
39 Department of Finance has approved a request by the
40 agency that funds be included in the Budget Bill for the

1 next following fiscal year to reimburse local agencies or
2 school districts for the costs mandated by the regulation.

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

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

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

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

31 SEC. 32. Section 11349.2 is added to the Government
32 Code, to read:

33 11349.2. An agency may add material to a rulemaking
34 file that has been submitted to the office for review
35 pursuant to this article if addition of the material does not
36 violate other requirements of this chapter.

37 SEC. 33. Section 11349.6 of the Government Code is
38 amended to read:

39 11349.6. (a) In the event the adopting agency has
40 complied with Sections 11346.2 to ~~11346.9~~ 11347.3,

1 inclusive, prior to the adoption of the regulation as an
2 emergency, the office shall approve or disapprove the
3 regulation in accordance with this article.

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

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

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

27 SEC. 34. Section 11350 of the Government Code is
28 amended to read:

29 11350. (a) Any interested person may obtain a
30 judicial declaration as to the validity of any regulation *or*
31 *order or repeal* by bringing an action for declaratory
32 relief in the superior court in accordance with the Code
33 of Civil Procedure. The right to judicial determination
34 shall not be affected by the failure either to petition or to
35 seek reconsideration of a petition filed pursuant to
36 Section 11340.7 before the agency promulgating the
37 ~~regulations~~ *regulation or order of repeal*. The regulation
38 *or order of repeal* may be declared to be invalid for a
39 substantial failure to comply with this chapter, or, in the
40 case of an emergency regulation or order to repeal, upon

1 the ground that the facts recited in the statement
2 *prepared pursuant to subdivision (b) of Section 11346.1*
3 do not constitute an emergency within the provisions of
4 Section 11346.1.

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

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

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

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

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

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

27 (1) *The rulemaking file prepared under Section*
28 *11347.3.*

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

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

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

37 SEC. 35. Section 11350.3 of the Government Code is
38 amended to read:

39 11350.3. Any interested person may obtain a judicial
40 declaration as to the validity of a *regulation or order of*

1 *repeal* which the office has disapproved ~~or—ordered~~
2 ~~repealed~~ pursuant to Section 11349.3, or 11349.6, or of a
3 *regulation that has been ordered repealed pursuant to*
4 *Section 11349.7* by bringing an action for declaratory
5 relief in the superior court in accordance with the Code
6 of Civil Procedure. The court may declare the regulation
7 valid if it determines that the regulation meets the
8 standards set forth in Section 11349.1 and that the agency
9 has complied with this chapter. If the court so determines,
10 it may order the office to immediately file the regulation
11 with the Secretary of State.

12 SEC. 36. Section 11353 of the Government Code is
13 amended to read:

14 11353. (a) Except as provided in subdivision (b), this
15 chapter does not apply to the adoption or revision of state
16 policy for water quality control and the adoption or
17 revision of water quality control plans and guidelines
18 pursuant to Division 7 (commencing with Section 13000)
19 of the Water Code.

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

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

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

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

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

37 (D) A certification by the chief legal officer of the
38 State Water Resources Control Board that the action was
39 taken in compliance with all applicable procedural

1 requirements of Division 7 (commencing with Section
2 13000) of the Water Code.

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

7 (4) The office shall review the regulatory provisions to
8 determine compliance with the standards of necessity,
9 authority, clarity, consistency, reference, and
10 nonduplication set forth in subdivision (a) of Section
11 11349.1. The office shall also review the responses to
12 public comments prepared by the State Water Resources
13 Control Board or the appropriate regional water quality
14 control board to determine compliance with the public
15 participation requirements of the Federal Water
16 Pollution Control Act (33 U.S.C. Sec. 1251 et seq.). The
17 office shall restrict its review to the regulatory provisions
18 and the administrative record of the proceeding. Sections
19 11349.3, 11349.4, 11349.5, and 11350.3 shall apply to the
20 review by the office to the extent that those sections are
21 consistent with this section.

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

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

30 (7) Any proceedings before the State Water Resources
31 Control Board or a California regional water quality
32 control board to take any action subject to this subdivision
33 shall be conducted in accordance with the procedural
34 requirements of Division 7 (commencing with Section
35 13000) of the Water Code, together with any applicable
36 requirements of the Federal Water Pollution Control Act
37 (33 U.S.C. Sec. 1251 et seq.), and the requirements of this
38 chapter, other than the requirement for review by the
39 office in accordance with this subdivision, shall not apply.

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

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

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

21 SEC. 37. Section 11356 of the Government Code is
22 amended to read:

23 11356. (a) Article 6 (commencing with Section
24 11349) is not applicable to ~~any building standards or~~
25 ~~administrative regulations that apply directly to the~~
26 ~~implementation or enforcement of a building standard,~~
27 ~~subject to the approval of the State Building Standards~~
28 ~~Commission~~ *a building standard.*

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

37 SEC. 38. Section 27491.41 of the Government Code is
38 amended to read:

39 27491.41. (a) For purposes of this section, “sudden
40 infant death syndrome” means the sudden death of any

1 infant that is unexpected by the history of the infant and
2 where a thorough postmortem examination fails to
3 demonstrate an adequate cause of death.

4 (b) The Legislature finds and declares that sudden
5 infant death syndrome (SIDS) is the leading cause of
6 death for children under age one, striking one out of
7 every 500 children. The Legislature finds and declares
8 that sudden infant death syndrome is a serious problem
9 within the State of California, and that public interest is
10 served by research and study of sudden infant death
11 syndrome, and its potential causes and indications.

12 (c) (1) To facilitate these purposes, the coroner shall,
13 within 24 hours, or as soon thereafter as feasible, perform
14 an autopsy in any case where an infant has died suddenly
15 and unexpectedly.

16 (2) However, if the attending physician desires to
17 certify that the cause of death is sudden infant death
18 syndrome, an autopsy may be performed at the discretion
19 of the coroner. If the coroner performs an autopsy
20 pursuant to this section, he or she shall also certify the
21 cause of death.

22 (d) The autopsy shall be conducted pursuant to a
23 standardized protocol developed by the State
24 Department of Health Services. The protocol is exempt
25 from the procedural requirements pertaining to the
26 adoption of administrative rules and regulations pursuant
27 to ~~Article 2 (commencing with Section 11342)~~ *Article 5*
28 *(commencing with Section 11346)* of Chapter 3.5 of Part
29 1 of Division 3 of Title 2 of the Government Code. The
30 protocol shall be developed and approved by July 1, 1990.

31 (e) The protocol shall be followed by all coroners
32 throughout the state when conducting the autopsies
33 required by this section. The coroner shall state on the
34 certificate of death that sudden infant death syndrome
35 was the cause of death when the coroner's findings are
36 consistent with the definition of sudden infant death
37 syndrome specified in the standardized autopsy protocol.
38 The protocol may include requirements and standards for
39 scene investigations, requirements for specific data,
40 criteria for ascertaining cause of death based on the

1 autopsy, and criteria for any specific tissue sampling, and
2 any other requirements. The protocol may also require
3 that specific tissue samples must be provided to a central
4 tissue repository designated by the State Department of
5 Health Services.

6 (f) The State Department of Health Services shall
7 establish procedures and protocols for access by
8 researchers to any tissues, or other materials or data
9 authorized by this section. Research may be conducted
10 by any individual with a valid scientific interest and prior
11 approval from the State Committee for the Protection of
12 Human Subjects. The tissue samples, the materials, and
13 all data shall be subject to the confidentiality
14 requirements of Section 103850 of the Health and Safety
15 Code.

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

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

24 (i) No consent of any person is required prior to
25 undertaking the autopsy required by this section.

26 SEC. 39. Section 57004 of the Health and Safety Code
27 is amended to read:

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

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

31 (A) A regulation, as defined in ~~subdivision (g) of~~
32 ~~Section 11342~~ *Section 11342.600* of the Government Code.

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

39 (2) “Scientific basis” and “scientific portions” means
40 those foundations of a rule that are premised upon, or

1 derived from, empirical data or other scientific findings,
2 conclusions, or assumptions establishing a regulatory
3 level, standard, or other requirement for the protection
4 of public health or the environment.

5 (b) The agency, or a board, department, or office
6 within the agency, shall enter into an agreement with the
7 National Academy of Sciences, the University of
8 California, the California State University, or any similar
9 scientific institution of higher learning, any combination
10 of those entities, or with a scientist or group of scientists
11 of comparable stature and qualifications that is
12 recommended by the President of the University of
13 California, to conduct an external scientific peer review
14 of the scientific basis for any rule proposed for adoption
15 by any board, department, or office within the agency.
16 The scientific basis or scientific portion of a rule adopted
17 pursuant to Chapter 6.6 (commencing with Section
18 25249.5) of Division 20 or Chapter 3.5 (commencing with
19 Section 39650) of Division 26 shall be deemed to have
20 complied with this section if it complies with the peer
21 review processes established pursuant to these statutes.

22 (c) No person may serve as an external scientific peer
23 reviewer for the scientific portion of a rule if that person
24 participated in the development of the scientific basis or
25 scientific portion of the rule.

26 (d) No board, department, or office within the agency
27 shall take any action to adopt the final version of a rule
28 unless all of the following conditions are met:

29 (1) The board, department, or office submits the
30 scientific portions of the proposed rule, along with a
31 statement of the scientific findings, conclusions, and
32 assumptions on which the scientific portions of the
33 proposed rule are based and the supporting scientific
34 data, studies, and other appropriate materials, to the
35 external scientific peer review entity for its evaluation.

36 (2) The external scientific peer review entity, within
37 the timeframe agreed upon by the board, department, or
38 office and the external scientific peer review entity,
39 prepares a written report that contains an evaluation of
40 the scientific basis of the proposed rule. If the external

1 scientific peer review entity finds that the board,
2 department, or office has failed to demonstrate that the
3 scientific portion of the proposed rule is based upon sound
4 scientific knowledge, methods, and practices, the report
5 shall state that finding, and the reasons explaining the
6 finding, within the agreed-upon timeframe. The board,
7 department, or office may accept the finding of the
8 external scientific peer review entity, in whole, or in part,
9 and may revise the scientific portions of the proposed rule
10 accordingly. If the board, department, or office disagrees
11 with any aspect of the finding of the external scientific
12 peer review entity, it shall explain, and include as part of
13 the rulemaking record, its basis for arriving at such a
14 determination in the adoption of the final rule, including
15 the reasons why it has determined that the scientific
16 portions of the proposed rule are based on sound scientific
17 knowledge, methods, and practices.

18 (e) The requirements of this section do not apply to
19 any emergency regulation adopted pursuant to
20 subdivision (b) of Section 11346.1 of the Government
21 Code.

22 (f) Nothing in this section shall be interpreted to, in
23 any way, limit the authority of a board, department, or
24 office within the agency to adopt a rule pursuant to the
25 requirements of the statute that authorizes or requires
26 the adoption of the rule.

27 SEC. 40. Section 5058 of the Penal Code is amended
28 to read:

29 5058. (a) The director may prescribe and amend
30 rules and regulations for the administration of the prisons
31 and for the administration of the parole of persons
32 sentenced under Section 1170 except those persons who
33 meet the criteria set forth in Section 2962. The rules and
34 regulations shall be promulgated and filed pursuant to
35 Chapter 3.5 (commencing with Section 11340) of Part 1
36 of Division 3 of Title 2 of the Government Code, except
37 as otherwise provided in this section. All rules and
38 regulations shall, to the extent practical, be stated in
39 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

1 to subdivision (f) of Section 6254 of the Government
2 Code.

3 (d) The following regulations are exempt from
4 Chapter 3.5 (commencing with Section 11340) of Part 1
5 of Division 3 of Title 2 of the Government Code under the
6 conditions specified:

7 (1) Regulations adopted by the director or the
8 director's designee applying to any legislatively
9 mandated or authorized pilot program or a
10 departmentally authorized pilot program, provided that
11 an estimate of fiscal impact is completed pursuant to
12 Section 6055, and following, of the State Administrative
13 Manual dated July 1986, and that the following conditions
14 are met:

15 (A) A pilot program affecting male inmates only shall
16 affect no more than 10 percent of the total state male
17 inmate population; a pilot program affecting female
18 inmates only shall affect no more than 10 percent of the
19 total state female inmate population; and a pilot program
20 affecting male and female inmates shall affect no more
21 than 10 percent of the total state inmate population.

22 (B) The director certifies in writing that the
23 regulations apply to a pilot program that qualifies for
24 exemption under this subdivision.

25 (C) The certification and regulations are filed with the
26 Office of Administrative Law and the regulations are
27 made available to the public by publication pursuant to
28 subparagraph (F) of paragraph (2) of subdivision (b) of
29 Section 6 of Title 1 of the California Code of Regulations.

30 The regulations shall become effective immediately
31 upon filing with the Secretary of State and shall lapse by
32 operation of law two years after the date of the director's
33 certification unless formally adopted by the director
34 pursuant to Chapter 3.5 (commencing with Section
35 11340) of Part 1 of Division 3 of Title 2 of the Government
36 Code.

37 (2) Action or actions, or policies implementing them,
38 taken by the department and based upon a
39 determination of imminent danger by the director or the
40 director's designee that there is a compelling need for

1 immediate action, and that unless that action is taken,
2 serious injury, illness, or death is likely to result. The
3 action or actions, or policies implementing them, may be
4 taken provided that the following conditions shall
5 subsequently be met:

6 (A) A written determination of imminent danger shall
7 be issued describing the compelling need and why the
8 specific action or actions must be taken to address the
9 compelling need.

10 (B) The written determination of imminent danger
11 shall be mailed within 10 working days to every person
12 who has filed a request for notice of regulatory actions
13 with the department and to the Chief Clerk of the
14 Assembly and the Secretary of the Senate for referral to
15 the appropriate policy committees.

16 Any policy in effect pursuant to a determination of
17 imminent danger shall lapse by operation of law 15
18 calendar days after the date of the written determination
19 of imminent danger unless an emergency regulation is
20 filed with the Office of Administrative Law pursuant to
21 subdivision (e). This section shall in no way exempt the
22 department from compliance with other provisions of
23 law related to fiscal matters of the state.

24 (e) Emergency regulations shall be adopted pursuant
25 to Chapter 3.5 (commencing with Section 11340) of Part
26 1 of Division 3 of Title 2 of the Government Code, except
27 that:

28 (1) Notwithstanding subdivision (e) of Section 11346.1
29 of the Government Code, the initial effective period for
30 emergency regulations shall be 160 days.

31 (2) No showing of emergency is necessary in order to
32 adopt emergency regulations other than a written
33 statement by the director or the director's designee, to be
34 filed with the Office of Administrative Law, certifying
35 that operational needs of the department require
36 adoption of the regulations on an emergency basis.

37 (3) This subdivision shall apply only to the adoption
38 and one readoption of any emergency regulation.

39 It is the intent of the Legislature, in authorizing the
40 deviations in this subdivision from the requirements and

1 procedures of Chapter 3.5 (commencing with Section
2 ~~113340~~ 11340) of Part 1 of Division 3 of Title 2 of the
3 Government Code, to authorize the department to
4 expedite the exercise of its power to implement
5 regulations as its unique operational circumstances
6 require.

7 SEC. 41. Section 25620.2 of the Public Resources Code
8 is amended to read:

9 25620.2. (a) The commission shall administer the
10 program in a manner that is consistent with the purposes
11 of Chapter 854 of the Statutes of 1996, and shall ensure
12 that the program meets all of the following criteria:

13 (1) Demonstrates a balance of benefits to all sectors
14 that contribute to the funding under Section 381 of the
15 Public Utilities Code.

16 (2) Addresses key technical and scientific barriers.

17 (3) Demonstrates a balance between short-term,
18 mid-term, and long-term potential.

19 (4) Ensures that research currently, previously, or
20 about to be undertaken by research organizations is not
21 unnecessarily duplicated.

22 (b) To ensure the efficient implementation and
23 administration of the program, the commission shall do
24 both of the following:

25 (1) Develop procedures for the solicitation of award
26 applications for project or program funding, and to
27 ensure efficient program management.

28 (2) Evaluate and select programs and projects, based
29 on merit, that will be funded under the program.

30 (c) To ensure the success of electric industry
31 restructuring in the transition to a new market structure
32 and to implement the program, the commission shall
33 adopt regulations, as defined in ~~subdivision (g) of Section~~
34 ~~11342~~ Section 11342.600 of the Government Code, in
35 accordance with the following procedures:

36 (1) Prepare a preliminary text of the proposed
37 regulation and provide a copy of the preliminary text to
38 any person requesting a copy.

39 (2) Provide public notice of the proposed regulation to
40 any person who has requested notice of the regulations

1 prepared by the commission. The notice shall contain all
2 of the following:

3 (A) A clear overview explaining the proposed
4 regulation.

5 (B) Instructions on how to obtain a copy of the
6 proposed regulations.

7 (C) A statement that if a public hearing is not
8 scheduled for the purpose of reviewing a proposed
9 regulation, any person may request, not later than 15 days
10 prior to the close of the written comment period, a public
11 hearing conducted in accordance with the procedures set
12 forth in Section 11346.8 of the Government Code.

13 (D) A deadline for the submission of written
14 comments.

15 (3) Accept written public comments for 30 calendar
16 days after providing the notice required in paragraph (2).

17 (4) Certify that all written comments were read and
18 considered by the commission.

19 (5) Place all written comments in a record that
20 includes copies of any written factual support used in
21 developing the proposed regulation, including written
22 reports and copies of any transcripts or minutes in
23 connection with any public hearings on the adoption of
24 the regulation. The record shall be open to public
25 inspection and available to the courts.

26 (6) Provide public notice of any substantial revision of
27 the proposed regulation at least 15 days prior to the
28 expiration of the deadline for public comments and
29 comment period using the procedures provided in
30 paragraph (2).

31 (7) Conduct public hearings, if a hearing is requested
32 by an interested party, that shall be conducted in
33 accordance with the procedures set forth in Section
34 11346.8 of the Government Code.

35 (8) Adopt any proposed regulation at a regularly
36 scheduled and noticed meeting of the commission. The
37 regulation shall become effective immediately unless
38 otherwise provided by the commission.

39 (9) Publish any adopted regulation in a manner that
40 makes copies of the regulation easily available to the

1 public. Any adopted regulation shall also be made
2 available on the Internet. The commission shall transmit
3 a copy of an adopted regulation to the Office of
4 Administrative Law for publication, or, if the commission
5 determines that printing the regulation is impractical, an
6 appropriate reference as to where a copy of the
7 regulation may be obtained.

8 (10) Notwithstanding any other provision of law, this
9 subdivision provides an interim exception from the
10 requirements of Chapter 3.5 (commencing with Section
11 11340) of Part 1 of Division 3 of Title 2 of the Government
12 Code for regulations required to implement Sections
13 25621 and 25622 that are adopted under the procedures
14 specified in this subdivision.

15 (11) This subdivision shall become inoperative on
16 January 1, 2000, unless a later enacted statute deletes or
17 extends that date. However, after January 1, 2000, the
18 commission shall not be required to repeat any
19 procedural step in adopting a regulation that has been
20 completed before January 1, 2000, using the procedures
21 specified in this subdivision.

22 SEC. 42. Section 11462.4 of the Welfare and
23 Institutions Code is amended to read:

24 11462.4. Notwithstanding Section ~~11342~~ 11342.610 of
25 the Government Code, group homes and foster family
26 agencies shall be deemed small businesses and the
27 department shall project the impact on group homes and
28 foster family agencies of any new regulations which will
29 affect those community care facilities.

